[Cite as *Natl. Fedn. of the Blind of Ohio v. Ohio Rehab. Servs. Comm.*, 2010-Ohio-3384.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

National Federation of the Blind of Ohio et al.,	:	
	:	
Plaintiffs-Appellants,	:	No. 09AP-1177
v.		(C.P.C. No. 08CVH08-12276)
	:	
Ohio Rehabilitation Services Commission et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on July 20, 2010

Blaugrund, Herbert & Martin, Inc., *David S. Kessler*, *an*d *Fazeel S. Khan*, for appellants.

Richard Cordray, Attorney General, *Katherine J. Bockbrader*, and *Melinda Snyder Osgood*, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

KLATT, J.

{¶1} Plaintiffs-appellants, the National Federation of the Blind, the Ohio Association of Blind Merchants, Stephen Vincke, Ron Armstrong, and Brian White, appeal from a judgment of the Franklin County Court of Common Pleas granting summary judgment to defendants-appellees, Ohio Rehabilitation Services Commission, Bureau of Services for the Visually Impaired ("Bureau"); Michael Hanes, Director of the Bureau; and Stephen Moore, Assistant Director of the Bureau. For the following reasons, we affirm in part and reverse in part.

{¶2} The Randolph-Sheppard Vending Stand Act, 20 U.S.C. 107, et seq., grants blind persons priority to operate vending facilities on federal property. Ohio law extends that priority to the operation of vending facilities located on state property as well. R.C. 3304.28, et seq. The Bureau administers the Randolph-Sheppard Vending Stand Act and the comparable Ohio statutes through the Business Enterprise Program ("BEP"). R.C. 3304.34; Ohio Adm.Code 3304:1-21-01(I). As administrator, the Bureau licenses blind persons to operate suitable vending facilities on governmental property. R.C. 3304.29(C). Vincke, Armstrong, and White are all licensed BEP operators.

{¶3} On August 26, 2008, plaintiffs filed an action alleging that defendants violated Ohio public records law through their mismanagement of BEP records. First, plaintiffs claimed that the Bureau violated R.C. 149.351(A) when it removed, transferred, or destroyed 14 pages of records contained in BEP operator Kurt LeMaster's file. Second, plaintiffs claimed that the Bureau attempted to violate R.C. 149.351(A) by seeking to institute a records retention schedule that sanctioned the destruction of BEP operators' files after a designated retention period. Third, plaintiffs claimed that defendants violated R.C. 149.43(B) by withholding requested public records. Plaintiffs' action requested damages and injunctive relief, as well as the issuance of a writ of mandamus.

{¶4} Defendants moved for summary judgment. On November 24, 2009, the trial court granted defendants' motion and entered judgment in their favor. Plaintiffs now appeal from that judgment and assign the following errors:

> The trial court erred in its November 24, 2009 Decision in the following four (4) ways:
>
> 1. By finding there is "no evidence" that Appellees removed/transferred/destroyed public records;

> 2. By failing to address the issue as to whether the term "except as provided by law", as contained in O.R.C. §149.351(B), exclusively refers to the requirements of a duly adopted policy for disposal of public records, as provided for in O.R.C. §149.333, or whether the term "except as provided by law" refers to a broader requirement that public records may not be disposed if doing so would violate a law in general;
>
> 3. By finding Appellees did not withhold public records;
>
> 4. By making purely factual determinations of belief and credibility, contrary to the legal standards of review to be applied on summary judgment.

{¶5} Appellate review of summary judgment motions is de novo. *Andersen v. Highland House Co.*, 93 Ohio St.3d 547, 548, 2001-Ohio-1607. " 'When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court.' " *Abrams v. Worthington*, 169 Ohio App.3d 94, 2006-Ohio-5516, ¶11 (quoting *Mergenthal v. Star Banc Corp.* (1997), 122 Ohio App.3d 100, 103). Civ.R. 56(C) provides that a trial court must grant summary judgment when the moving party demonstrates that: (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶6.

{¶6} When seeking summary judgment on the ground that the nonmoving party cannot prove its case, the moving party bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on an essential element of the nonmoving party's claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. The moving party does not discharge this initial burden under Civ.R. 56 by simply making a

conclusory allegation that the nonmoving party has no evidence to prove its case. Id. Rather, the moving party must affirmatively demonstrate by affidavit or other evidence allowed by Civ.R. 56(C) that the nonmoving party has no evidence to support its claims. Id. If the moving party meets this initial burden, then the nonmoving party has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party. Id.

{¶7} In the case at bar, the trial court granted summary judgment on three claims arising under Ohio's public records statutes. Those statutes reflect state policy "that open government serves the public interest and our democratic system." *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, ¶20. Consistent with this policy, Ohio courts construe public records law liberally to favor broad access and resolve any doubt in favor of disclosure of public records. *State ex rel. Perrea v. Cincinnati Pub. Schools*, 123 Ohio St.3d 410, 2009-Ohio-4762, ¶13; *Kish v. Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, ¶19. These principles inform our analysis of each of plaintiffs' assignments of error.

{¶8} By their first assignment of error, plaintiffs argue that they presented evidence that the Bureau removed, transferred, or destroyed 14 pages of public records, and thus, the trial court erred in granting summary judgment to the Bureau on their first claim. We disagree.

{¶9} On November 21, 2006, the Bureau convened a selection committee to determine who would operate vending facility no. 495, located in the post office on Citygate Drive in Columbus. Two experienced, licensed BEP operators had applied for the position: Armstrong and LeMaster. The Bureau gave the selection committee both Armstrong and LeMaster's operator files to assist it in evaluating each applicant's

interpersonal skills and previous experience in the BEP. LeMaster's operator file did not contain 14 pages of records regarding LeMaster's performance as a BEP operator. In large part, these 14 pages reflected complaints arising from LeMaster's operation of other vending facilities.

{¶10} After interviewing and evaluating Armstrong and LeMaster, the selection committee chose LeMaster to be the permanent operator of the Citygate Drive vending facility. Upset with this outcome, Armstrong filed a grievance with the Bureau. In his grievance and the subsequent hearing, Armstrong asserted that the selection committee would not have rated LeMaster's interpersonal skills as highly as it did had it reviewed the 14 pages. At the hearing, David S. Kessler, Armstrong's attorney, questioned Moore about the whereabouts of the 14 pages:

> Q: And none of [the 14 pages] [were] presented to this selection committee?
>
> A: Well, correct. Correct.
>
> * * *
>
> Q: Why not?
>
> A: I have no idea.
>
> Q: Where did it go?
>
> A: I don't know that either.
>
> Q: I mean, we got this stuff through public records at request. Has it been destroyed?
>
> A: I wouldn't think so.
>
> Q: Where is it?
>
> A: I don't know.
>
> Q: Has it been removed from [LeMaster's] file?

> A: I can't answer that, because I wouldn't have removed it.
>
> Q: Who would have?
>
> A: Don't know.

(Tr. 261-62.)

{¶11} Kessler continued his search for the "missing" 14 pages in a June 16, 2008 letter to Hanes. In that letter, Kessler stated:

> I would like to know where these fourteen (14) pages are currently and why they were taken out of Mr. LeMaster's file. I would also like copies of all documents, correspondences or records concerning the decision to take these fourteen (14) pages out of Mr. LeMaster's file, or otherwise move or segregate these pages. In short, we want copies of every document that concerns these pages, in whole or in part.

Hanes replied in a July 11, 2008 letter, stating:

> As for the documents you've requested pertaining to the fourteen (14) pages of records concerning Mr. Le[M]aster's interpersonal skills, I cannot provide them because they do not exist within any [Rehabilitation Service Commission] files. Likewise, no correspondence or records exist concerning the removal of those records.

{¶12} Based on the above facts, plaintiffs contend that the Bureau removed, transferred, or destroyed the 14 pages in violation of R.C. 149.351(A). That section provides:

> All records are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law.

Pursuant to R.C. 149.351(B), a person may commence a civil action against a public office if that person "is aggrieved by the removal, destruction, mutilation, or transfer of, or by other damage to or disposition of a record in violation of division (A) of this section, or

by threat of such removal, destruction, mutilation, transfer, or other damage to or disposition of such a record."

{¶13} To contradict plaintiffs' claim, the Bureau submitted an affidavit from Hanes, who admitted that the selection committee did not receive the 14 pages, but denied that the Bureau destroyed those pages. Specifically, Hanes stated:

> I am familiar with the [14 pages]. These documents are currently held in the possession of [the Bureau]. They have not been destroyed, and are available to be produced in response to a public records request. They have been produced in response to public records requests in the past, and if requested today, would be produced.

{¶14} After reviewing the totality of the evidence, the trial court concluded that plaintiffs had failed to prove that a genuine issue of material fact existed as to whether the Bureau removed, transferred, or destroyed any public records. Because the evidence adduced established that the Bureau currently possesses the disputed 14 pages, the trial court held that the Bureau had not violated R.C. 149.351(A).

{¶15} On appeal, plaintiffs point to Hanes' July 11, 2008 letter as evidence that the Bureau either destroyed the 14 pages or removed or transferred them from its files. Plaintiffs contend that Hanes' letter contains an admission that, as of the date of that letter, the 14 pages did not exist in any Bureau file. Plaintiffs speculate that Hanes' subsequent testimony that the Bureau currently possesses the 14 pages only proves that the Bureau copied the documents from another source and restored them to its files.

{¶16} We find plaintiffs' interpretation of the evidence implausible. Kessler's June 16, 2008 letter requested that the Bureau disclose any records *concerning* the 14 pages, not the 14 pages themselves. In his July 11, 2008 response, Hanes merely replied to Kessler's request, stating that no documents existed "pertaining to" the 14 pages or "concerning" their removal from LeMaster's file. Thus, Hanes' letter only

addressed the existence of documents *about* the 14 pages, not the 14 pages themselves. Because no reasonable fact finder could conclude that the July 11, 2008 letter is evidence that the Bureau removed, transferred, or destroyed the 14 pages, the trial court properly granted the Bureau summary judgment on plaintiffs' first claim. Accordingly, we overrule plaintiffs' first assignment of error.

{¶17} By their second assignment of error, plaintiffs argue that the trial court failed to address whether R.C. 149.351(A) permits the destruction of public records pursuant to a duly adopted records retention schedule. We disagree.

{¶18} As we stated above, R.C. 149.351(A) prohibits the removal, destruction, mutilation, transfer, or other damage to or disposition of public records "except as provided by law." Pursuant to the exception contained in R.C. 149.351(A), if the destruction of a public record is permitted by law, then it does not violate R.C. 149.351(A). *Keller v. Columbus*, 100 Ohio St.3d 192, 2003-Ohio-5599, ¶32. Here, the trial court held that R.C. 149.333 permits the destruction of records pursuant to a duly adopted records retention schedule, and thus, implementation of the Bureau's records retention schedule did not threaten a violation of R.C. 149.351(A). We concur with this holding.

{¶19} When interpreting a statute, a court must first examine the plain language of the statute itself to determine the legislative intent. *Kraynak v. Youngstown City School Dist. Bd. of Edn.*, 118 Ohio St.3d 400, 2008-Ohio-2618, ¶10; *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless*, 113 Ohio St.3d 394, 2007-Ohio-2203, ¶12. If the statute's meaning is clear, unequivocal, and definite, then statutory interpretation ends, and the court applies the statute according to its terms. *Columbia Gas Transm. Corp. v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, ¶19; *Hubbell v. Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, ¶11.

{¶20} R.C. 149.333 states that:

> No state agency shall retain, destroy, or otherwise transfer its state records in violation of this section.
>
> Each state agency shall submit to the state records program under the director of administrative services all applications for records disposal or transfer and all schedules of records retention and destruction. The state records program shall review the applications and schedules and provide written approval, rejection, or modification of an application or schedule. The state records program shall then forward the application for records disposal or transfer or the schedule for retention or destruction, with the program's recommendation attached, to the auditor of state for review and approval. * * * If the auditor of state disapproves the action by the state agency, the auditor of state shall so inform the state agency through the state records program within sixty days, and the records shall not be destroyed.
>
> At the same time, the state records program shall forward the application for records disposal or transfer or the schedule for retention or destruction to the state archivist for review and approval. The state archivist shall have sixty days to select for custody the state records that the state archivist determines to be of continuing historical value. Records not selected shall be disposed of in accordance with this section.

Thus, pursuant to R.C. 149.333, all state agencies must retain, destroy, and transfer their records in accordance with a duly-adopted records retention schedule or an approved application for records disposal or transfer. Before a state agency can destroy any records, its records retention schedule or application for records disposal must receive the approval of the State Records Program, the Auditor of State, and the State Archivist. R.C. 149.333 requires that records not chosen by the State Archivist for retention "be disposed of in accordance with this section."

{¶21} In the case at bar, the Bureau's records retention schedule for the BEP operators' files received the necessary approvals. Therefore, R.C. 149.333 mandates that the BEP operators' files be retained and destroyed as set forth in the duly adopted

records retention schedule. Because the destruction of the BEP operators' files is "provided by law," the records retention schedule does not threaten a violation of R.C. 149.351(A).

{¶22} Plaintiffs, however, argue that R.C. 149.333 merely dictates the technical process for approval of a records retention schedule. They contend that R.C. 149.333 does not actually permit the destruction of any documents, and thus, it cannot serve as a basis for a state agency to claim the R.C. 149.351(A) exception. Not only is this interpretation inconsistent with the plain language of the statute, it would nullify every records retention schedule. Under the plaintiffs' reading of R.C. 149.333, each time a state agency destroyed documents as required under an approved records retention schedule, it would violate R.C. 149.351(A). To avoid breaking the law, state agencies would be forced to ignore their records retention schedules and retain all documents indefinitely. Because plaintiffs' interpretation of R.C. 149.333 would undermine both the statute's plain meaning and Ohio's public records retention system, we reject it, and we overrule plaintiffs' second assignment of error.

{¶23} By plaintiffs' third assignment of error, they argue that the trial court erred in granting summary judgment on their claim that defendants violated R.C. 149.43(B)(1). Specifically, plaintiffs argue that summary judgment was not appropriate because they presented evidence establishing a genuine issue of material fact regarding whether: (1) the Bureau timely disclosed the June 27, 2007 settlement agreement it entered into with LeMaster, and (2) the Bureau wrongly withheld documents regarding its refusal to pay the Ohio Department of Transportation ("ODOT") for the cleaning and maintenance of highway vending facilities. We will address each argument in order.

{¶24} In a June 22, 2007 letter, Kessler, acting on plaintiffs' behalf, requested that the Bureau provide him copies of:

> 1. All grievances filed on behalf of Kurt LeMaster between December, 2006 and the present with any Business Enterprise Program staff person, including Michael Hanes, Steve Moore, Lisa Kemp, [Cindy Markin] and/or any member of the [Rehabilitation Services Commission] staff.
>
> 2. All correspondence between Kurt LeMaster or his attorneys and any staff member at the Bureau of Services for the Visually Impaired [ ], including Michael Hanes, Steve Moore, Lisa Kemp, [Markin] and/or every other [Bureau] staff member between December, 2006 and the present.
>
> 3. All letters, e-mails, grievances, hearing officer reports, and any other documents concerning the blind vendor facilities in Licking County, Facility #530 and/or Kurt LeMaster, created or modified between December, 2006 and the present.

{¶25} Markin, an administrative assistant for the BEP, assembled 169 pages of documents that were responsive to Kessler's request and mailed the documents to Kessler. After reviewing the documents, Kessler noticed that one of the documents, a December 4, 2005 e-mail from LeMaster to Hanes, referenced two grievances that LeMaster had filed in response to a Bureau decision. In a July 25, 2007 letter to Markin, Kessler complained that he had not received any documents regarding the two grievances and stated:

> If [the Rehabilitation Services Commission] has inadvertently failed to provide [information pertaining to the two grievances], I request [the Rehabilitation Services Commission] to immediately supplement its production of documents to include the necessary information. If [the Rehabilitation Services Commission] has purposely excluded information pertaining to these two grievances due to insufficiency of my earlier public records requests, please accept this letter as a request for public records request pursuant to R.C. §149.43 for copies of all documentation concerning grievances #06-26BE and #06-27BE.

{¶26} Markin received Kessler's letter on Friday, July 27, 2007. The following Monday, Markin e-mailed Kessler the following:

> I am in receipt of your letter dated July 25th [ ] and to my knowledge I have forwarded you everything in our records pertaining to your three public records requests.[1] In reference to the attached email mentioning Grievance #06-26BE & 06-27BE, they were both at the administrative review level and an administrative review has not been held on either one nor has anything else been added to the files after the December 4, 2005, email.
>
> If I have inadvertently missed any information pertaining to your public records request[,] I will be unable to comply with your request to send the information to you within three days as Director Hanes is out of the office until August 6th. Upon his return[,] I will double check with him to make sure I haven't missed anything. I will inform you of the outcome of my inquiry as soon as possible after Director Hanes' return.

{¶27} Markin consulted with Hanes after his return to the office on August 6, 2007. On August 13, 2007, Markin mailed to Kessler a copy of a settlement agreement that the Bureau and LeMaster had executed on June 27, 2007. In the settlement agreement, LeMaster agreed to withdraw grievance nos. 06-26BE and 06-27BE (along with two other grievances) in return for a monetary award.

{¶28} Based on the above facts, plaintiffs claimed that defendants violated R.C. 149.43(B)(1), which provides that, "upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time." The trial court resolved this claim through summary judgment because it found "that the defendants have complied with the plaintiffs' request for the June 27, 2007 settlement agreement within a reasonable amount of time."

[1] Apparently, the three public records requests Markin refers to are: (1) the June 22, 2007 letter, (2) the July 25, 2007 letter, and (3) a December 19, 2006 letter, in which Kessler asked for the same type of documents as he requested in the June 22, 2007 letter, but for the period of June 26, 2006 through December 19, 2006.

(Emphasis sic.) (R. 75 at 9.) On appeal, plaintiffs argue that the trial court impermissibly decided a genuine issue of material fact—whether the Bureau complied with their records request within a reasonable time—when it granted summary judgment.

{¶29} Initially, plaintiffs contend that the Bureau had to disclose the June 27, 2007 settlement agreement in response to the June 22, 2007 request that the Bureau turn over "any other documents concerning the blind vendor facilities in Licking County, [and] Facility #530." Plaintiffs claim that the settlement agreement concerns both blind vendor facilities in Licking County and vending facility no. 530. The record, however, does not contain any evidence to support this claim. The only vending facility mentioned in the settlement agreement is the Citygate Drive vending facility, which is located in Franklin County, not Licking County. Moreover, the Citygate Drive vending facility is designated as vending facility no. 495, not vending facility no. 530. Therefore, contrary to plaintiffs' contention, no reasonable fact finder could construe the June 22, 2007 request as seeking the settlement agreement.

{¶30} Nevertheless, plaintiffs' claim remains viable because Kessler's July 25, 2007 letter requested the settlement agreement. That letter asked for "copies of all documentation concerning grievances #06-26BE and #06-27BE." As the settlement agreement resolved grievance nos. 06-26BE and 06-27BE, it is a document "concerning" those grievances. Accordingly, whether the Bureau violated R.C. 149.43(B) turns upon whether it responded to Kessler's July 25, 2007 letter "within a reasonable period of time."

{¶31} Markin received Kessler's July 25, 2007 letter on July 27, 2007 and provided Kessler a copy of the settlement agreement on August 13, 2007. During this period, 17 days elapsed. Defendants argue that a 17-day response time is reasonable

because Hanes was on vacation until August 6, 2007, and his absence prevented the Bureau from producing the settlement agreement.

{¶32} " '*When* records are available for public inspection and copying is often as important as *what* records are available.' " *State ex rel. Consumer News Servs., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶34 (emphasis sic) (quoting *State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Environmental Protection Agency* (2000), 88 Ohio St.3d 166, 172). A determination of whether the Bureau complied with its statutory duty to timely provide a copy of the settlement agreement "depends upon all of the pertinent facts and circumstances." *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, ¶10. In these circumstances, whether 17 days constitutes a reasonable period of time is a genuine issue of material fact about which reasonable minds could come to different conclusions. Although Hanes' vacation might adequately explain the Bureau's delay in producing the settlement agreement, we conclude that the reasonableness of the delay in light of the Bureau's explanation constitutes a question for a finder of fact. Therefore, the trial court erred in granting summary judgment on plaintiffs' claim that defendants violated R.C. 149.43(B) in belatedly turning over the June 27, 2007 settlement agreement.

{¶33} Next, plaintiffs argue that a genuine issue of material fact remains as to whether defendants violated R.C. 149.43(B) in failing to disclose documents regarding the Bureau's nonpayment of maintenance fees owed to ODOT. In a June 16, 2008 letter to Hanes, Kessler wrote:

> [S]everal Business Enterprise operators have been informed that [the Bureau] is delinquent on its payment obligations to ODOT for charges related to electricity and cleaning of operator sites. As you know, [the Bureau] collects fees from the Business Enterprise operators for the purpose of satisfying this payment obligation. Accordingly, my clients

> want to know how their contributions for this purpose [are] being spent. Specifically, my clients request information pertaining to the last invoice from ODOT for these charges, the last payment made by [the Bureau] to ODOT for these charges, the amount of the last payment made by [the Bureau] to ODOT for these charges, and the outstanding balance claimed by ODOT for these charges.

{¶34} Hanes answered Kessler's letter on July 11, 2008, explaining that the Bureau was withholding fees due to ODOT because ODOT was neglecting its duty to maintain the highway vending facilities. In response to Kessler's specific inquiries, Hanes stated:

> [The Bureau] received the last invoice from ODOT on April 10, 2008. That invoice was for $42,893.20. [The Bureau] has held the payments to ODOT since October 5, 2007, totaling $127,889.30. [The Bureau] has not received an invoice for the period April – June 2008.

{¶35} "Requests for information * * * are improper requests under R.C. 149.43." *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶30. Here, Kessler's June 16, 2008 letter sought information—not documents—regarding the amounts ODOT billed the Bureau, the amounts the Bureau paid, and the amounts still owing. Because Kessler only requested information regarding the Bureau's refusal to pay ODOT, plaintiffs cannot now premise a claim for a violation of R.C. 149.43(B) on Kessler's request.

{¶36} Plaintiffs, however, contend that a subsequent letter clarified Kessler's June 16, 2008 letter, and indicated that Kessler wanted copies of documents related to the Bureau's failure to pay ODOT. This argument is disingenuous. In a July 22, 2008 letter, Kessler indeed requested documents, but not about the Bureau's nonpayment of ODOT invoices. Rather, he sought documents pertaining to Hanes' claims that: (1) ODOT had an obligation to maintain the highway vending facilities, (2) ODOT was not

fulfilling its obligation on a state-wide basis, and (3) the Bureau and ODOT were discussing the issue. Thus, the July 22, 2008 letter does not attempt to "clarify" Kessler's earlier letter as a request for documents related to nonpayment. In fact, the July 22, 2008 letter does not mention Kessler's earlier request for nonpayment information at all.

{¶37} In sum, we conclude that the trial court properly granted defendants summary judgment on plaintiffs' claim that defendants violated R.C. 149.43(B) by failing to produce documents concerning the Bureau's denial of payment to ODOT. However, we agree with plaintiffs that the trial court erred in granting summary judgment on their claim that defendants violated R.C. 149.43(B) by untimely producing the June 27, 2007 settlement agreement. Accordingly, we overrule in part and sustain in part plaintiffs' third assignment of error.

{¶38} By plaintiffs' fourth assignment of error, they argue that a genuine issue of material fact remains regarding whether defendants impermissibly withheld a proposed records retention schedule in response to a public records request. In an August 4, 2008 letter, Fazeel S. Khan, one of plaintiffs' attorneys, requested that the Rehabilitation Services Commission produce copies of "[a]ll documents concerning the destruction and/or shredding and/or removal of any documents from the files of Operators in the Business Enterprise Program." Annetta Milliron, the records manager for the Rehabilitation Services Commission, replied that:

> [The Rehabilitation Services Commission] is unable to honor your request because there are no documents that met your request. No destruction of documents from the Operator files in the [Business Enterprise] program has occurred. The Record Retention Schedule for this group of records has been approved through [the Department of Administrative Services], but no number has been assigned. The Record Retention Schedule can not be used until [the Department of Administrative Services] assigns a Series Authorization Number. There has been no destruction and/or shredding

> and/or removal of documents per the Record Retention Schedule.
>
> * * *
>
> To review RSC Record Retention Policies and Record Retention Schedules, please visit our web site at: www.rsc.state.oh.us or the [Department of Administrative Services] web site at: www.das.ohio.gov/rims[.]

{¶39} " '[I]t is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue.' " *State ex rel. Morgan v. Strickland* at ¶14 (quoting *State ex rel. Morgan v. New Lexington* at ¶29). Moreover, "R.C. 149.43 contemplates that the requester and the public-records custodian cooperate in fulfilling a request." Id. at ¶18. Here, Milliron interpreted Khan's request as seeking documents regarding destruction, shredding, or removal that had already occurred. If Milliron misinterpreted Khan's request, then Khan needed to clarify it. Milliron's letter provided Khan with the necessary information to do so by acknowledging the existence of the proposed records retention schedule and explaining why she believed it fell outside the realm of documents Khan requested. She also directed Khan to websites that made the proposed records retention schedule available to the public. Khan, however, did not cooperate with Milliron to further specify the documents he sought. Given these circumstances, no reasonable finder of fact could conclude that defendants violated R.C. 149.43(B) by failing to provide Khan a copy of the proposed records retention schedule. Accordingly, we overrule plaintiffs' fourth assignment of error.

{¶40} For the foregoing reasons, we overrule plaintiffs' first, second, and fourth assignments of error, and we sustain in part and overrule in part plaintiffs' third assignment of error. Consequently, we affirm in part and reverse in part the judgment of

the Franklin County Court of Common Pleas, and we remand this matter to that court for further proceedings consistent with law and this opinion.

Judgment affirmed in part and reversed in part; and cause remanded.

BROWN and CONNOR, JJ., concur.