

[Cite as *State ex rel. Zidonis v. Columbus State Community College*, 2011-Ohio-6817.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Sunday Zidonis, :

Relator, :

No. 10AP-961

v.

(REGULAR CALENDAR)

Columbus State Community College, :

Respondent. :

D E C I S I O N

Rendered on December 30, 2011

James J. Leo, for relator.

Michael DeWine, Attorney General, *Jeffery W. Clark*, and
Holly LeClair, for respondent.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

SADLER, J.

{¶1} In this original action, relator, Sunday Zidonis, requests a writ of mandamus ordering respondent, Columbus State Community College ("CSCC"), to produce its litigation files, complaint files, and e-mail messages sought by relator in a public records request. Relator also requests an award of statutory damages, attorney fees, and court costs for CSCC's alleged failure to promptly prepare the requested records.

{¶2} Pursuant to Civ.R. 53 and Loc.R. 12(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate concluded that relator's records requests were overly broad, that CSCC promptly responded to the requests, and that relator was not entitled to statutory damages, attorney fees or court costs. Accordingly, the magistrate recommended that this court deny the requested writ of mandamus.

{¶3} Relator has not submitted objections to the magistrate's findings of fact, and we adopt those findings as our own. Relator now presents the following seven objections to the magistrate's conclusions of law:

OBJECTION #1: THE MAGISTRATE'S DECISION ILLOGICALLY AND INCORRECTLY REQUIRES THAT THE PUBLIC RECORDS REQUESTOR MUST KNOW THE CONTENTS OF THE RECORDS HE OR SHE IS SEEKING IN ORDER TO MAKE A PUBLIC RECORDS REQUEST.

OBJECTION #2: THE MAGISTRATE'S DECISION INCORRECTLY CONFUSES THE CONCEPT OF AN "OVERBROAD" REQUEST WITH THE CONCEPT OF A "VOLUMINOUS" REQUEST.

OBJECTION #3: THE MAGISTRATE'S DECISION INCORRECTLY FINDS THAT A REQUEST CAN BE AMBIGUOUS EVEN THOUGH IT IS FOR RECORDS EXACTLY IDENTIFIED BY A RETENTION SCHEDULE.

OBJECTION #4: THE MAGISTRATE'S DECISION FAILS TO HOLD CSCC TO ITS DUTY TO IDENTIFY HOW THE COMPLAINT FILES AND LITIGATION FILES MAY BE RETRIEVED.

OBJECTION #5: THE MAGISTRATE INCORRECTLY DETERMINED THAT MS. ZIDONIS FAILED TO NARROW HER REQUEST FOR E-MAILS.

OBJECTION #6: THE MAGISTRATE INCORRECTLY DETERMINED THAT A REQUESTOR MUST KNOW THE CONTENTS OF E-MAILS IN ORDER TO REQUEST THEM.

OBJECTION #7: THE MAGISTRATE FAILED TO CONCLUDE THAT CSCC HAS A DUTY TO MAINTAIN E-MAILS SUCH THAT THEY MAY BE RETRIEVED THROUGH A PUBLIC RECORDS REQUEST.

{¶4} In her first four objections, relator argues that the magistrate erred by finding her request for CSCC's litigation and complaint files to be overly broad. Because CSCC's retention schedule contained headings labeled "Litigation Files" and "Complaint Files," relator claims that, to be sufficiently specific, she was only required to reference those headings in her request. According to relator, to hold otherwise would impermissibly require a requestor to know the contents of the records. We disagree.

{¶5} A records request is not specific merely because it names a broad category of records listed within an agency's retention schedule. " '[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. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶29, quoting *State ex rel. Fant v. Tober*, 68 Ohio St.3d 117, 1993-Ohio-154. "In identifying the records at issue, the Public Records Act 'does not contemplate that any individual has the right to a complete duplication of voluminous files kept by government agencies.' " *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶17, quoting *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 624, 1994-Ohio-5.

{¶6} For instance, in *State ex rel. Zauderer v. Joseph* (1989), 62 Ohio App.3d 752, this court found a request for "all traffic reports" of the Ohio State Highway Patrol to

be "first, unreasonable in scope and, second, if granted, would interfere with the sanctity of the recordkeeping process itself." *Id.* at 756. Moreover, in *State ex rel. Dehler v. Spatny*, 127 Ohio St.3d 312, 2010-Ohio-5711, the Supreme Court of Ohio found a request for the prison quartermaster's orders for and receipt of clothing and shoes over seven years to be overbroad because it sought what amounted to a complete duplication of the quartermaster's records. *Id.* at ¶3.

{¶7} Based on this precedent, we hold that the magistrate correctly found relator's request to be overly broad. By seeking all "litigation files" and "complaint files" over a six-year period, relator's request was unreasonable in scope and would have required a complete duplication of CSCC's litigation and complaint files. Relator was not obligated to know the exact contents of each record; however, she was required to identify the records at issue with reasonable clarity. *Morgan* at ¶29.

{¶8} We also reject relator's contention that CSCC owed a duty to explain how to retrieve the records. While R.C. 149.43(B)(2) requires a public office to inform the requestor of "the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties," the statute does not, as the magistrate correctly found, require a public office to explain how a records request should be phrased. Accordingly, relator's first four objections are overruled.

{¶9} Similarly, we reject the arguments contained in relator's fifth and sixth objections, which pertain to relator's request for copies of all e-mails exchanged between herself and Deborah Coleman. Relator asserts that all e-mails are public

records, and, therefore, she was not required to know the contents of each e-mail or narrow her search within the e-mails exchanged between herself and Coleman.

{¶10} While relator was not required to know the exact contents of each e-mail requested, e-mail messages are subject to disclosure under the Public Records Act "if they are '(1) documents, devices, or items, (2) created or received by or coming under the jurisdiction of the state agencies, (3) which serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." *Glasgow* at ¶20, quoting *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, ¶19; R.C. 149.011(G).

{¶11} While relator may have requested e-mails that satisfied the first and second requirements above, she did not identify e-mails related to the organization, function, policy, decision, procedures, operation or work-related activity of CSCC. Relator broadly requested an entire method of communication (i.e., e-mail messages), not cognizable public records. See, e.g., *Glasgow* at ¶17-19 (records request overly broad where it sought all e-mail messages, text messages, and correspondence sent to and from a public official). As the magistrate correctly found based on the Supreme Court of Ohio's holding in *Glasgow*, such a request is overly broad. Because we agree with the magistrate's conclusion, relator's fifth and sixth objections are overruled.

{¶12} In her seventh objection, relator contends that CSCC owed a duty to maintain its e-mails in a manner suitable for her public records request. However, as explained above, relator's request was overly broad as it requested a medium, i.e., e-mail messages, without regard to a particular work-related activity. Although R.C. 149.43(B) requires public offices to organize and maintain its "public records," the

statute does not impose a duty on public offices to make an entire medium (i.e., e-mail messages) available for inspection. Further, a public office does not violate R.C. 149.43(B) merely because an alternative means of organizing records exists. See *State ex rel. Bardwell v. Cleveland*, 126 Ohio St.3d 195, 2010-Ohio-3267, ¶5. Accordingly, relator's seventh objection is overruled.

{¶13} Upon review of the magistrate's decision, an independent review of the record, and due consideration of relator's objections, we find the magistrate has properly determined the pertinent facts and applied the appropriate law. We, therefore, adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein.

{¶14} Accordingly, relator's objections to the magistrate's decision are overruled, and the requested writ of mandamus is hereby denied.

*Objections overruled;
writ of mandamus denied.*

KLATT and DORRIAN, JJ., concur.

A P P E N D I X
 IN THE COURT OF APPEALS OF OHIO
 TENTH APPELLATE DISTRICT

State of Ohio ex rel. Sunday Zidonis,	:	
Relator,	:	
v.	:	No. 10AP-961
	:	(REGULAR CALENDAR)
Columbus State Community College,	:	
Respondent.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on August 15, 2011

James J. Leo, for relator.

Michael DeWine, Attorney General, *Jeffery W. Clark* and
Holly LeClair, for respondent.

IN MANDAMUS

{¶15} Relator, Sunday Zidonis, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, Columbus State Community College ("Columbus State"), to permit relator to inspect Columbus State's litigation and complaint files and to provide relator with e-mails which relator requested. Relator also asks that this court award her statutory damages, attorney fees and court costs for Columbus State's alleged failure to promptly prepare the records which relator requested.

Findings of Fact:

{¶16} 1. In a letter dated June 16, 2010, relator's counsel, James J. Leo, submitted a request for public records to Columbus State on relator's behalf seeking the following records:

* Personnel File for Sunday Zidonis

I have included an attached medical information release from Ms. Zidonis authorizing you to send any medical records in her file to me.

{¶17} 2. According to the affidavit of Jackie DeGenova ("DeGenova"), Assistant Attorney General/In-house counsel for Columbus State, relator's June 16, 2010 records request was received by Columbus State's vice president of human resources on June 21, 2010.

{¶18} 3. In an e-mail dated June 25, 2010, relator's counsel was notified that relator's personnel file had been prepared as follows:

We received your public records request for the personnel file for Sunday Zidonis. The file has been copied and there are 158 pages. Please send a check for \$15.80 to Columbus State Community College.

Once we receive the payment, the documents will be mailed to you.

{¶19} 4. In a letter dated June 29, 2010, relator's counsel acknowledged the receipt of relator's personnel file and requested further documents as follows:

You provided to me a copy of Ms. Zidonis's personnel file, pursuant to my public records request (of June 16, 2010). However, the documents you supplied did not contain any position descriptions. Also, while I requested medical records in her file (including leave slips) there [were none] included. I am wondering if these documents are kept separate from the personnel file.

Please advise as to where I might find the position descriptions and the medical records.

(Footnote omitted.)

{¶20} 5. According to DeGenova's affidavit, Columbus State received relator's counsel's June 29, 2010 letter on June 30, 2010.

{¶21} 6. On June 30, 2010, counsel for relator requested the following additional records:

- * **Personnel File for Yvonne Watson**, Off-campus Services Supervisor at Columbus State[.]

- * Copies of **e-mails** sent between Sunday Zidonis and Deborah Coleman (i.e., those sent to Ms. Coleman from Ms. Zidonis, and those sent to Ms. Zidonis from Ms. Coleman)[.]

(Emphasis sic.)

{¶22} 7. In an e-mail dated July 9, 2010, Columbus State notified relator's counsel that Ms. Watson's personnel file and additional items had been prepared as follows:

Your most recent public records requests (dated June 29 and June 30) for Yvonne Watson's personnel file and additional items for Sunday Zidonis are ready.

The cost to duplicate Ms. Watson's personnel file is \$12.60 for the cost to duplicate Ms. Zidonis is \$2.40. Please make the check payable to CSCC and forward to the college. Once we receive payment the documents will be mailed to you or if you chose [sic] to pick up the documents, kindly let me know in advance so that I can make sure they are at the front desk.

{¶23} 8. In a letter dated July 13, 2010, DeGenova responded to relator's counsel's request for Watson's personnel file and responded to relator's counsel's requests for e-mails as follows:

Pursuant to your records request dated June 30, 2010, Columbus State's Human Resources Department has notified you and will provide to you a copy of the personnel file for Yvonne Watson. Please contact Ms. Carmelita Boyer in HR should you not receive the requested records.

Regarding your request for copies of emails sent between Sunday Zidonis and Deborah Coleman, this request is overly broad; see R.C. § 149.43(B)(2). The College is not able to identify the specific records you are requesting.

The College is happy to assist you in identifying the records you seek. Please contact me * * * at your earliest convenience to revise or clarify your request.

{¶24} 9. In a letter dated July 21, 2010, counsel for relator made the following additional public records request:

*** Personnel File for Deborah Coleman**

If you should need advance payment for copying costs, please contact me immediately and I will promptly send you a check.

Also, please advise the nature by which staffs' electronic e-mails are stored at Columbus State and how they may be retrieved, so that I may do a follow up public records request.

(Emphasis sic.)

{¶25} 10. In an e-mail dated July 29, 2010, Columbus State notified relator's counsel that Coleman's personnel file was ready:

The request for Deborah Coleman's personnel file has been copied. The amount for this request is \$6.70. Please contact me to let me know if you want it mailed or if you'll be in to pick the packet up.

{¶26} 11. Counsel for relator requested that the file be mailed.

{¶27} 12. According to DeGenova's affidavit, even though she had denied the request for all e-mails as overly broad, she began discussions with Columbus State's network administrator to determine whether or not it was possible to search for all e-mails between two employees. DeGenova avers further that she requested that an attempt be made to recover the e-mails from the disaster recovery system and asked that a search be made for any e-mails that were in both relator's name and Coleman's name which appeared as either the sender or recipient of the e-mails.

{¶28} 13. In a letter dated August 2, 2010, counsel for relator complained about the costs of documents being sent to him, as well as the promptness of Columbus State in preparing those documents as follows:

Enclosed is a check for \$9.62 this represents the copying cost (\$6.70) and mailing costs of \$2.92.

In a correspondence from Ms. Boyer[,] I was told the mailing cost is \$7.51. The weight of the 67 pages plus an envelope is 13 ounces. The cost to mail 13 ounces is \$2.92. Perhaps the difference in the postage amounts is because CSCC wishes to send these via certified mail. I do not wish to have any other mailing services, such as a certified, mailing added to the expense.

The Ohio Public Records Act requires that agency's produce records at costs and in a reasonable amount of time. (R.C. 149.43(B)(1)[]). CSCC has done neither.

I know of no other agency that sends public records by certified mail. Also, CSCC's time spent responding is not reasonable. I was initially told the records were available as of July 29, 2010. When I asked staff to send them to me, I was told that staff would have to check on mailing cost and would get back with me. Four days later (after I send [sic] an e-mail to prompt this along) I finally get an e-mail back about the

postage cost. I cannot help but feel that CSCC is looking for every possible opportunity to make public records responses slow, cumbersome, and needlessly costly - - contrary to what is required by the Public Records Act.

If I do not receive the records within five days from the date of this letter, I will have no choice but to file a mandamus action in court against CSCC.

(Footnote omitted.)

{¶29} 14. According to DeGenova's affidavit, on or about August 3, 2010, she was informed that the network administrator was able to retrieve certain e-mails and that he had created a special file and program which DeGenova could utilize to access, review, and make any necessary redactions to those e-mails. Further, DeGenova avers that, on August 5, 2010, the network administrator provided her with a lesson on how to use the file and program he had created.

{¶30} 15. In a letter dated August 9, 2010, relator's counsel sent another letter to Columbus State with regards to e-mails and further seeking a copy of the public records retention schedule:

I am writing to make the following two requests:

[One] e-mails

In a July 21, 2010 letter to you I asked that you,

[P]lease advise the nature by which staffs' electronic e-mails are stored at Columbus State and how they may be retrieved, so that I may do a follow up public records request.

To date, no response has been made.[fn. 1] I am once again asking that you respond to [t]his request and please do so as soon as possible.

[Two] public records retention schedule

Please provide me with the public records retention schedule maintained by Columbus State Community College.

* * *

Fn.1 This is the second request for this information.

(Emphasis sic.; fn. in original.)

{¶31} 16. In a letter dated August 24, 2010, DeGenova responded to relator's counsel again indicating that the request for e-mails was overly broad and addressing the previous records requests to which Columbus State had already responded:

This letter is in response to your requests for public records and your recent letter of August 9, 2010. Regarding your claim that the College has not been responsive to your requests, allow me to remind you of our response letters or e-mails to you dated July 2, [2]010, July 9, 2010, July 13, 2010 and July 22, 2010. Additionally, the College has been prompt in reviewing and providing the requested personnel files of Ms. Zidonis, Ms. Yvonne Watson and Dr. Deborah Coleman.

You have also requested (June 30, 2010) copies of e-mails sent between Sunday Zidonis and Deborah Coleman. My response to you July 13, 2010 indicated that your request was overly broad pursuant to R.C. 149.43(B)(2) and that the College was and is unable to identify the specific records you seek. Your written reply (July 21, 2010) requested information as to the "nature by which staffs' electronic e-mails are stored at Columbus State and how they may be retrieved" so as to follow up on your request.

Again I am happy to discuss both and assist you in narrowing your request for identifiable records responsive to your request. Please contact the College at your convenience. Should I be unavailable, please contact Terri Williams-Miller in Human Resources or my office associate, Karen Fabritius[.]

* * *

I also note that on August 9, 2010, you requested to be provided with the College's record retention schedule. The schedule can be made available in hard-copy, if you prefer. If

you prefer electronic format, I will seek assistance from our IT division to accomplish this. Please advise which format you are seeking.

{¶32} 17. In an e-mail dated August 27, 2010, Columbus State e-mailed relator's counsel a copy of the records retention schedule:

In response to your public records request dated August 9, 2010, I have attached to this email the Records Retention Schedule that Columbus State Community College currently utilizes.

{¶33} 18. In a letter dated September 3, 2010, relator's counsel again commented on the requested e-mails and made an additional request for litigation and complaint files:

I have the following questions/comments:

[One] As you know, e-mails are records under the Ohio Public Record Law. (See R.C. 149.011(G); see also *Governor Ted Strickland's Public Record Policy* at page 1). I have reviewed the CSCC public records schedule and can only assume that, at some point, e-mails are printed off into paper form and then each printed e-mail is placed in the appropriate category within the CSCC retention schedule. If I am incorrect, please advise as to how the e-mails are retained.

[Two] In what category within the retention schedule would I find e-mails between an employee and her supervisor about the various projects being worked on (the day-to-day e-mails about work)?

[Three] I would like to arrange to look at records IUC-HR-10-04 (complaint files), and IUC-LEG-20-01 (litigation files). Is there a way to look at these records for certain periods of time (e.g., over the past year)? These records have a six year retention period, so a smaller period of time would involve less effort on behalf of CSCC.

{¶34} 19. According to DeGenova's affidavit, she attended a status conference at the State Personnel Board of Review ("SPBR") on September 8, 2010, and relator's

counsel was present. DeGenova avers that, at that time, she acknowledged that she had not had the opportunity to thoroughly review relator's counsel's latest record request (September 3, 2010) and that, in her opinion, the e-mail request was still overly broad, and she asked whether or not the request could be narrowed "by year, name of file or project, etc." DeGenova indicates that relator's counsel was not able to provide a time frame for the request nor was he able to provide a subject matter for identification of the e-mails. Nevertheless, DeGenova indicates that she informed relator's counsel that she would continue to discuss other methods for retrieving e-mails with the "IT division."

{¶35} 20. In his affidavit, relator's counsel disagrees with DeGenova's recollection of the meeting. According to relator's counsel:

[Four] I disagree with Ms. DeGenaro's [sic] recollection of the September 8, 2010 meeting. My recollection of that meeting is that Ms. DeGenaro [sic] told me that she would ask her "I.T." technicians about search criteria by which e-mails can be retrieved and that she would get back to me with such information, so I could make a request that CSCC could fulfill.

[Five] At the September 8, 2010 meeting, Ms. DeGenaro [sic] did not explain the manner in which e-mails can be retrieved. If she had explained that matter, I would not have written her on September 14 and 21, 2010 asking her about "search criteria" by which e-mails can be accessed.

{¶36} 21. In a letter dated September 14, 2010, counsel for relator notified Columbus State that he might come and personally inspect the requested records:

I am writing as a follow-up to our meeting on September 8, 2010 and my previous correspondence of September 3, 2010.

Please advise when I may come to Columbus State to review records IUC-HR-10-04 (complaint files), and IUC-LEG-20-01

(litigation files). I would like to do this either at the end of this week (Friday) or sometime next week.

Also, you said you would ask the I.T. staff about the form in which e-mails can be retrieved. Please advise if e-mails are available in electronic form and/or paper form (either way is fine with me) and advise about the various search criteria by which e-mail may be retrieved. After I get this information, I will give you a time frames [sic] and other information related to the e-mail aspects of my public records request.

(Footnote omitted.)

{¶37} 22. In a letter dated September 22, 2010, counsel for relator essentially made the same request that he made in his September 14, 2010 letter.

{¶38} 23. On October 6, 2010, relator filed the instant mandamus action in this court.

{¶39} 24. In a letter dated November 3, 2010, DeGenova again responded to relator's counsel's public records request and provided a CD copy of certain e-mails recovered from relator's and Coleman's computers. Specifically, DeGenova's November 3, 2010 letter provides, as follows:

I write in response to your letters of September 14 and September 22, 2010 and in follow up to our September 8 status conference at the SPBR. Our discussion during the status conference regarding your public records request for e-mails between Ms. Zidonis and Dr. Deborah Coleman did little to assist me in identifying the specific e-mails you seek. You were unable to estimate a time-frame, subject matter or other criteria for identifying the e-mails you seek. As promised at the status conference, however, I have inquired of our IT division and learned that the College is capable of making a number of possibly responsive e-mails available to you in electronic or paper form.

Again, allow me to reiterate that your initial and identical follow-up requests for "copies of e-mails sent between

Sunday Zidonis and Deborah Coleman (i.e: those sent to Ms. Coleman from Ms. Zidonis, and those sent to Ms. Zidonis from Ms. Coleman)" is ambiguous and overly broad (R.C. 149.43 (B)(2)). I am unable to reasonably identify the specific records, subject matter, time-frame or any other reasonable aspect of specificity by which to identify the e-mails and therefore deny this request.

As previously indicated during the September 8th status conference, Columbus State retains, organizes and accesses its records based on the content of the record. In regard to e-mail records, each employee of the College has the ability to create documents and folders as part of the e-mail system and the particular records series to which the records belong, according to their individual needs. For example, if you request to review certain e-mails in the folders created by Ms. Zidonis or Dr. Coleman, it is likely the College can search by this method. The College is unable to and is not required to provide access to entire record series or categories.

In an effort to attempt to provide records responsive to your request, I am providing to you a CD copy of e-mails from Ms. Zidonis' and Dr. Coleman's employee computers which I have identified as "sent" between Ms. Zidonis and Dr. Coleman. As you can see, some of these e-mails date back years and were saved by the employee. In providing this CD, I have reviewed hundreds of potentially responsive records (e-mails), reviewed each e-mail and its attachments for responsiveness pursuant to R.[.]C. 149.43 *et seq.*, and additionally, redacted those records or portions of records which are non-responsive, non-records or otherwise protected from disclosure due to confidentiality or pursuant to R.C. 3319.321 or the federal FERPA, 34 C.F.R. 99.31 *et seq.*

Where applicable or required, there are visible redactions on the CD. The tax identification number on the "State of Minnesota, Minnesota State College and Universities Service Agreement and Income Contract" (enclosed in hard copy) is redacted/concealed as a practice to prevent * * * identity theft. Should you seek this information, however, I am happy to make it available to you.

Regarding your requests for "complaint files" and "litigation files", these requests are ambiguous and overly broad and

are therefore denied pursuant to R.C. 149.43 (B)(2). I had previously provided you with an electronic version of CSCC's record retention schedule as part of my explanation as to how records are maintained and accessed. I am unable to reasonably identify specific records which are being requested for this inspection and again, the College is unable to and is not required to provide access to entire record series or categories.

I welcome the opportunity to assist you in identifying the specific records, complaints or lawsuits you seek to review. Please contact me at your earliest convenience * * * to discuss your request.

{¶40} 25. In an undated letter received by Columbus State on December 2, 2010, counsel for relator made the following additional request for public records:

I am making a public request for e-mails from Sunday Zidonis to Brian Seeger over the past two years.

Also, I have reviewed the public records (e-mails from Ms. Zidonis and Ms. Coleman) that you sent. I notice that there were only a few e-mails from 2009. Please advise whether e-mails for that year (2009) were destroyed or misplaced.

{¶41} 26. In a letter dated December 17, 2010, DeGenova replied to relator's counsel's December 2010 request:

This letter is in response to your 12-2-10 request for records and a follow-up to my acknowledgement letter of December 3, 2010. You've requested "e-mails from Sunday Zidonis to Brian Seeger over the past two years". Additionally, you indicate that, after review of prior records the College has provided, specifically the e-mails sent between Ms. Zidonis and Ms. Coleman, you request me to "advise whether e-mails for that year (2009) were destroyed or misplaced."

Regarding your request for e-mails from Sunday Zidonis to Brian Seeger over the past two years, the request is denied as ambiguous and overly broad (see R.C. 149.43(B)(2)). This request, similar to your previous requests for "e-mails between Ms. Zidonis and Dr. Deborah Coleman" does not reasonably identify the specific records you seek. See also

State ex rel. Glasgow v. Jones, 119 Ohio St. 3d. 391, 2008 Ohio 4788. Please understand that the College will similarly respond and deny your continued requests for a category of records or an entire record series. CSCC does not maintain nor index its records, including e-mail or electronic records, by "sender" or "recipient" categories. Rather, it is the content of the document which governs. Given that your client, Ms. Zidonis was responsible to retain her e-mails based upon the content of the subject matter, it is my hope that she can provide a subject, date, file folder or other reasonably specific method by which the College might identify the records you seek.

In response to your question whether certain e-mails for 2009 were destroyed or misplaced, this request for information is not a request for records pursuant to R.C. 149.43 (A). See also *State ex rel. Fant v. Tober*, No. 63737, 1993 Ohio App. Lexis 2591.

I urge you to attempt to specify or add clarity in your requests for the records you seek. Again, I welcome the opportunity to assist you in identifying the records you seek to review or copy. Please contact me at your convenience[.] * * *

{¶42} 27. In her affidavit, DeGenova detailed the difficulties Columbus State would face to retrieve litigation and complaint files because relator's counsel had not narrowed the request:

* * * CSCC litigation files are not organized, or required to be organized, in the manner in which Mr. Leo requested to inspect them. Mr. Leo's request was to inspect all "litigation files," without regard to the named defendant, type of case, date opened, the court in which the litigation was brought, or any other manner in which litigation files are organized and maintained either at the CSCC, or with its litigation counsel at the Ohio Attorney General's Office, in the ordinary course of business. Requests in the form stated by Mr. Leo asking that all "litigation files" be presented to him for inspection would require gathering all existing files of that description, open or closed, from whatever location, perform all necessary redaction of material within each file excepted from release by attorney-client privilege, work product and

trial preparation privileges, as well as social security numbers, and any other applicable exceptions from the Ohio Public Records Act, before presenting the files for inspection. There are at least 8-12 litigation files opened at CSCC each year which fall under the definition of the IUC-LEG-20-01 records retention series. CSCC litigation files are not maintained all together at any single location.

* * * CSCC complaint files are not organized, or required to be organized, in the manner in which Mr. Leo requested to inspect them. Mr. Leo's request was to inspect all "complaint files," without regard to the name of the complainant, type of complainant (e.g., student, faculty, other employee, etc.), the department or division in which the complaint was lodged, type of complaint, or any other manner in which complaint files are organized and maintained at the CSCC in the ordinary course of business. Requests in the form stated by Mr. Leo asking that all "complaint files" be presented to him for inspection would require gathering all existing files of that description, open or closed, from whatever location, perform all necessary redaction of material within each file that is excepted from release by Employee Assistance Program rules, Equal Employment Opportunity Commission rules, FERPA, social security numbers, and any other applicable exceptions from the Ohio Public Records Act, before presenting the files for inspection. There are an unknown but substantial number of complaint files opened each year within various divisions, departments, and physical locations throughout the CSCC. Neither original CSCC complaint files nor copies thereof are maintained all together at any single location.

{¶43} 28. This matter was submitted to the magistrate on briefs on June 7, 2011.

Conclusions of Law:

{¶44} Relator argues that: (1) Columbus State improperly denied her request for complaint and litigation files on grounds that the request was ambiguous and overly broad; (2) Columbus State was required to make those records available and, to the

extent that her request was ambiguous or overly broad, Columbus State should have done more to assist relator in narrowing the scope of her search; (3) Columbus State improperly delayed providing her with the e-mails she requested on grounds that her request was ambiguous and overly broad; (4) Columbus State should have already had a formal way of categorizing and maintaining e-mails; and (5) Columbus State did not provide her the proper assistance so that she could narrow her e-mail request. Relator also seeks statutory damages, attorney fees, and court costs for Columbus State's alleged failure to promptly prepare the requested documents and/or assist relator in narrowing the scope of her search.

{¶45} For the reasons that follow, it is this magistrate's decision that relator has not demonstrated that Columbus State improperly denied her requests for records on grounds that the requests were ambiguous and overly broad, that Columbus State did promptly respond to all of relator's record requests, and that relator is not entitled to an award of statutory damages, attorney fees, and court costs.

{¶46} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶47} R.C. 149.43 pertains to the availability of public records and provides, in pertinent part, as follows:

(B)(1) Upon request[,] * * * all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during

regular business hours. * * * [U]pon 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. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. * * *

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. * * *

* * *

(7) Upon a request made in accordance with division (B) of this section[,] * * * a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time

after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to this division. A public office that adopts a policy and procedures under this division shall comply with them in performing its duties under this division.

* * *

(C)(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(1) of this section.

* * *

If a requestor transmits a written request by hand delivery or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requestor shall be entitled to recover the amount of statutory damages set forth in this division 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.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

* * *

(2)(a) If the court issues a writ of mandamus that orders the public office or the person responsible for the public record to comply with division (B) of this section and determines that the circumstances described in division (C)(1) of this section exist, the court shall determine and award to the relator all court costs.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, the court may award reasonable attorney's fees subject to reduction as described in division (C)(2)(c) of this section. The court shall award reasonable attorney's fees, subject to reduction as described in division (C)(2)(c) of this section[.] * * *

* * *

(c) Court costs and reasonable attorney's fees awarded under this section shall be construed as remedial and not punitive. * * *

{¶48} The purpose of the Ohio Public Records Act "is to expose government activity to public scrutiny, which is absolutely essential to the proper working of a democracy." *State ex rel. Gannett Satellite Info. Network, Inc. v. Petro* (1997), 80 Ohio

St.3d 261, 264, quoting *State ex rel. WHIO-TV-7 v. Lowe* (1997), 77 Ohio St.3d 350, 355. Scrutiny of public records allows citizens to evaluate the rationale behind government decisions so government officials can be held accountable. See *White v. Clinton Cty. Bd. of Commrs.* (1996), 76 Ohio St.3d 416, 420.

{¶49} As indicated in the findings of fact, relator has made numerous requests for public records from Columbus State beginning in June 2010. Relator has requested her own personnel file, a description of her position, her medical records, the personnel file for Yvonne Watson, e-mails between herself and her supervisor Deborah Coleman, the personnel file for Deborah Coleman, all complaint and litigation files, and e-mails between herself and Brian Seeger. It is undisputed that relator has received the majority of the documents which she requested. The only issues at this time are whether relator's requests for complaint and litigation files, as well as e-mails between herself and Coleman were sufficiently specific so that Columbus State could access those documents or whether the requests were overly broad and ambiguous making it difficult, if not impossible, for Columbus State to respond and whether or not Columbus State responded promptly. As will be hereinafter explained, it is this magistrate's decision that relator's requests for complaint and litigation files and for e-mails between herself and Coleman were ambiguous and overly broad, and the magistrate also finds that relator failed to sufficiently narrow the description of those documents so that Columbus State could reply. Further, it is this magistrate's decision that Columbus State has complied with the public records law by promptly preparing those documents sufficiently described, and that Columbus State both properly denied certain requests as

being ambiguous and overly broad and provided the requisite guidance to relator to help her narrow the scope of her request. As such, this court should deny relator's request for a writ of mandamus.

{¶50} In her brief, relator first addresses Columbus State's refusal to provide her with the complaint and litigation files. Thereafter, relator's brief addresses Columbus State's alleged failure to provide her with the requested e-mails. The magistrate will address the records requests in the same order in which relator presented them.

Complaint and Litigation Files

{¶51} In the September 3, 2010 letter, relator's counsel requested the following:

[Three] I would like to arrange to look at records IUC-HR-10-04 (complaint files), and IUC-LEG-20-01 (litigation files). Is there a way to look at these records for certain periods of time (e.g., over the past year)? These records have a six year retention period, so a smaller period of time would involve less effort on behalf of CSCC.

{¶52} Relator never narrowed this request; instead, in letters dated September 14 and 22, 2010, relator's counsel informed Columbus State that he wanted to see those records and would likely come to Columbus State to view them.

{¶53} Columbus State responded to these requests as follows: (1) at the September 8, 2010 status conference at SPBR, DeGenova informed relator's counsel that she had not thoroughly reviewed his September 3, 2010 letter which included his request for complaint and litigation files. (2) In a letter dated November 3, 2010, DeGenova informed counsel: that the requests for "complaint files" and "litigation files" were ambiguous and overly broad and were, therefore, denied. DeGenova explained

that she was unable to reasonably identify specific records, and the college was not required to provide access to an entire service or category. DeGenova provided relator's counsel with her phone number and offered to assist counsel in identifying the records he sought. (3) In her affidavit, DeGenova explained further that litigation and complaint files are not organized and are not required to be organized in the manner in which relator's counsel requested. Further, a request to inspect all litigation and complaint files without regard to named defendant/complainant, type of case/complaint, date opened, court in which litigation was brought, the department or division in which the complaint was brought, or any other manner in which litigation/complainant files are organized was overly broad and ambiguous. In order to provide those records, someone would have to gather them, both open and closed, from various locations, perform all necessary redactions of material in each file excepted from release by attorney-client privilege, work product and trial preparation privileges, as well as social security numbers, and any other applicable exception from the Ohio Public Records Act (regarding litigation files); by the Employee Assistance Program rules, Equal Opportunity Commission rules, FERPA, social security numbers, and any other applicable exception from the Ohio Public Records Act (regarding complaint files), before providing them for inspection. According to DeGenova, there are at least 8 to 12 litigation files and an unknown but significant number of complaint files opened each year. (See Findings of Fact Nos. 19, 24 and 27.)

{¶54} Relator contends that Columbus State's reason for not providing her with all litigation and complaint files violates the law. In response, Columbus State maintains

that relator's request is ambiguous and overly broad and that Columbus State is unable to determine what records to prepare.

{¶55} In *State ex rel. Zauderer v. Joseph* (1989), 62 Ohio App.3d 752, 755-56, the relator, Phillip Q. Zauderer, had requested the opportunity to inspect or copy traffic accident reports. This court found that Zauderer's request for all accident reports filed on any given date was overly broad, stating:

The issue in this case focuses not on the availability of the records requested, but rather on the method of retrieval used by the state, county and municipal governments, respectively, in compiling and disclosing such data. R.C.A [sic] 149.43 requires that these government entities "shall maintain public records in such a manner that they can be made available for inspection in accordance with this division." * * *

{¶56} R.C. 149.43(B) states, in pertinent part:

"* * * *Upon request*, a person responsible for public records shall make copies available at cost, within a reasonable period of time. * * *" (Emphasis added.)

A "request" unlike a demand, is the expression of a desire made to some person for something to be granted or done. Black's Law Dictionary (5 Ed.1979) 1172. It presupposes that the person to whom the request is made has the authority to deny or to grant the request. Like a motion, under Civ.R. 7(B)(1), however, a request must be specific and particularly describe what it is that is being sought. See *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 526 N.E.2d 798. A general request, which asks for everything, is not only vague and meaningless, but essentially asks for nothing. At the very least, such a request is unenforceable because of its overbreadth. At the very best, such a request is not sufficiently understandable so that its merit can be properly considered.

The request, made by the relator here, cannot rise to the status of a request pursuant to R.C. 149.43, because it asks

for all traffic reports. The indefiniteness of such a request renders it incapable of being acted upon and certainly unsuitable for mandamus. Moreover, this general request, even if it could be defined, is, first, unreasonable in scope and, second, if granted, would interfere with the sanctity of the recordkeeping process itself. R.C. 149.43 does not contemplate that any individual has the right to a complete duplication of the voluminous files kept by government agencies. The right to inspection is circumscribed by endangerment to the safety of the record and/or unreasonable interference with the discharge of the duties of the records custodian. *Barton v. Shupe* (1988), 37 Ohio St.3d 308, 525 N.E.2d 812. For information to be available to inspect, *albeit* to view or examine, it must be retrievable. The methods of retrieval employed by respondents comply with the Public Records Act[.] * * *

(Emphasis sic.)

{¶57} Similarly, in *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 2001-Ohio-193, the relator, Kelly Dillery, requested that the Sandusky Police Chief provide her with copies of "any and all records generated, in the possession of your department, containing any reference whatsoever to Kelly Dillery." *Id.* The Supreme Court of Ohio found her request to be overbroad and stated, at 314-15:

Dillery's first request to the Sandusky Police Chief was overbroad. * * * Because Dillery did not specify in her first request that she wanted access only to offense and incident reports, she failed in her duty to identify the records she wanted with sufficient clarity. *State ex rel. Taxpayers Coalition v. Lakewood* (1999), 86 Ohio St.3d 385, 391, 715 N.E.2d 179, 185, quoting *State ex rel. Fant v. Tober* (May 20, 1993), Cuyahoga App. No. 63737, unreported, * * * affirmed (1993), 68 Ohio St.3d 117, 623 N.E.2d 1202.

{¶58} As the *Dillery* court explained, even if certain records exist and could be accessed, the request can still be too broad.

{¶59} In the present case, relator argues that the mere fact that these documents exist and are listed on the records retention schedule, Columbus State is required to make them available for inspection. However, the magistrate notes that, while relator did indicate a certain willingness to limit her search to something less than the six years of time in which the records are retained, relator never did narrow her search. Further, relator never informed Columbus State of the type of litigation or complaint files she was interested in seeing. As in *Zauderer* and *Dillery*, the magistrate finds that relator's request was overly broad and was not specific enough and further finds that Columbus State was not in a position to determine what type of files relator actually wanted. While public offices are required to inform the requester of the manner in which records are maintained and accessed in the ordinary course of duty, public offices are not required to frame the search for the requester. Here, Columbus State provided relator with a copy of its current records retention schedule. From that, relator was able to identify that she wanted a certain class of litigation and complaint files; however, relator failed to narrow the search further by providing Columbus State with any dates, names of parties, or issues addressed in the particular files. Because at no time did relator attempt to narrow this search, the magistrate finds that Columbus State properly denied her request as being ambiguous and overly broad. Further, without any input from relator, Columbus States' ability to help her with her search was restricted, and the record demonstrates that efforts were made by Columbus State. As such, the magistrate finds that there is no violation of Ohio's Public Records Act as it relates to relator's request for complaint and litigation files.

E-mail Requests

{¶60} Relator's counsel also requested e-mails as follows: (1) in the June 30, 2010 letter, relator requested the following:

* Copies of **e-mails** sent between Sunday Zidonis and Deborah Coleman (i.e, those sent to Ms. Coleman from Ms. Zidonis, and those sent to Ms. Zidonis from Ms. Coleman)[.]

(Emphasis sic.) (2) In the August 9, 2010 letter, counsel requested:

In a July 21, 2010 letter to you I asked that you,

[P]lease advise the nature by which staffs' electronic e-mails are stored at Columbus State and how they may be retrieved, so that I may do a follow up public records request.

To date, no response has been made. I am once again asking that you respond to [t]his request and please do so as soon as possible.

(3) In the September 3, 2010 letter, counsel for relator requested the following:

[One] As you know, e-mails are records under the Ohio Public Record Law. (See R.C. 149.011(G); see also *Governor Ted Strickland's Public Record Policy* at page 1). I have reviewed the CSCC public records schedule and can only assume that, at some point, e-mails are printed off into paper form and then each printed e-mail is placed in the appropriate category within the CSCC retention schedule. If I am incorrect, please advise as to how the e-mails are retained.

[Two] In what category within the retention schedule would I find e-mails between an employee and her supervisor about the various projects being worked on (the day-to-day e-mails about work)?

(4) In the September 14, 2010 letter, counsel requested the following:

Also, you said you would ask the I.T. staff about the form in which e-mails can be retrieved. Please advise if e-mails are available in electronic form and/or paper form (either way is

fine with me) and advise about the various search criteria by which e-mail may be retrieved. After I get this information, I will give you a time frames and other information related to the e-mail aspects of my public records request.

(5) In the September 22, 2010 letter, relator's counsel again sent the above request. (6)

In the December 2, 2010 letter, relator's counsel requested the following:

Also, I have reviewed the public records (e-mails from Ms. Zidonis and Ms. Coleman) that you sent. I notice that there were only a few e-mails from 2009. Please advise whether e-mails for that year (2009) were destroyed or misplaced.

{¶61} Columbus State's responses are detailed and lengthy. To summarize, in a letter dated August 24, 2010, DeGenova reminded relator's counsel that Columbus State responded to his requests in e-mails and letters "dated July 2, [2]010, July 9, 2010, July 13, 2010 and July 22, 2010"¹ and promptly provided the requested personnel files of Zidonis, Coleman and Watson. Regarding e-mails, DeGenova again indicated that the requests were overly broad pursuant to R.C. 149.43(B)(2) and that Columbus State was unable to identify which records relator wanted. DeGenova again indicated that she was available to discuss both the manner in which e-mails can be retrieved and help relator's counsel narrow the search and provided her telephone number. (See Findings of Fact No. 16.)

{¶62} In a letter dated November 3, 2010, DeGenova responded to relator's counsel's September 14 and 22, 2010 letters and followed up on their discussions at the September 8, 2010 status conference at SPBR. DeGenova reminded relator's counsel

¹Although DeGenova references four e-mails/letters here, the magistrate is unable to verify that e-mails/letters dated July 2 and July 22, 2010 exist after reviewing both the stipulation of evidence and the documents attached to DeGenova's affidavit.

that he had been unable to estimate a time frame, provide a subject matter, or in any other manner, narrow his e-mail requests. DeGenova pointed out that, in spite of relator's counsel's inability to narrow relator's search, she had asked the network administrator to try and find some way to retrieve some e-mails. This task had taken time because each employee at Columbus State saves their e-mails in folders named by the individual employee and not by Columbus State. In spite of the difficulties in retrieving the e-mails, and after reviewing hundreds of e-mails, DeGenova presented relator's counsel with a CD containing e-mails which were subject to release under applicable laws and informed him that portions of the e-mails had been redacted as required. (See Findings of Fact No. 24.)

{¶63} Relator argues that Columbus State did not do enough to help her narrow the scope of her search for e-mails. In support of her argument, relator notes that her counsel sent DeGenova several letters after the status conference at SPBR and asserts that DeGenova's failure to respond to each of those additional letters shows that Columbus State did not comply with the Ohio Public Records Act. Finally, because Columbus State was ultimately able to provide her with a CD containing numerous e-mails after she filed her mandamus action, relator contends that Columbus State's ability to finally prepare these documents pursuant to her request is further evidence that Columbus State failed to promptly respond to her request and argues that she is entitled to an award of statutory damages, attorney fees, and court costs.

{¶64} There is no dispute that e-mails are public records. See R.C. 1306.01(G) and 149.011(G). Recently, in *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, the relator, Jeffery L. Glasgow, had requested that State

Representative Shannon Jones provide him with copies of e-mail messages, text messages, and correspondence she sent or received over a general period of time in her official capacity as a Representative of the Ohio General Assembly. Glasgow specifically sought all e-mails sent or received by Jones including, but not limited to, e-mails having as their subject matter Sub.H.B. No. 151.

{¶65} Although the court found that e-mail messages created or received by Jones in her capacity as a state representative and that documented her work-related activities constitute records subject to disclosure under R.C. 149.43, the Supreme Court of Ohio in *Glasgow* determined that Glasgow's request was overly broad, stating:

* * * " [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. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 29, quoting *State ex rel. Fant v. Tober* (Apr. 28, 1993), Cuyahoga App. No. 63737, 1993 WL 173743, *1, affirmed in *State ex rel. Fant v. Tober* (1993), 68 Ohio St.3d 117, 623 N.E.2d 1202. In identifying the records at issue, the Public Records Act, "does not contemplate that any individual has the right to a complete duplication of voluminous files kept by government agencies." *State ex rel. Warren Newspapers, Inc. v. Hutson* (1994), 70 Ohio St.3d 619, 624, 640 N.E.2d 174, citing *State ex rel. Zauderer v. Joseph* (1989), 62 Ohio App.3d 752, 577 N.E.2d 444.

* * *

Based on * * * precedent [of *Zauderer* and *Dillery*], we hold that insofar as Glasgow broadly sought all of Jones's work-related e-mail messages, text messages, and correspondence during her entire tenure as state representative, his request was improper because it was overly broad. In essence, Glasgow's general request impermissibly sought what approximated a "complete duplication" of Jones's files.

* * *

Id. at ¶17, 19.

{¶66} In the present case, DeGenova explained to relator that Columbus State did not have a category of e-mails. Further, DeGenova's affidavit establishes that she had numerous discussions with Columbus State's network administrator in order to determine whether or not e-mails between two employees at Columbus State could be retrieved. The network administrator was ultimately able to create a program so that DeGenova could search for e-mails that would meet relator's request; however, she continued to ask relator to narrow her request. The record indicates that relator never did narrow her request for e-mails with a time frame, a subject matter, or with any other criteria to enable Columbus State to reasonably identify the records. Ultimately, the network administrator was able to copy files restored from the disaster recovery system and to retrieve e-mails from relator's available saved electronic files and those e-mails were copied onto a CD and were ultimately provided to relator.

{¶67} Relator contends that Columbus State did not promptly prepare these e-mails. This magistrate disagrees. The record reflects that relator never narrowed the request regarding the e-mails, yet, in spite of relator's failure to narrow the request, Columbus State, through DeGenova's actions, continued to determine whether or not e-mails between relator and Coleman could be retrieved in any fashion. While this did take a long time, there is no evidence in the record that Columbus State purposefully delayed responding to relator's request. As DeGenova explained in her affidavit, each e-mail had to be reviewed and, if necessary, certain information might need to be redacted. In fact, the stipulated evidence indicates that Columbus State promptly responded to all of relator's requests for public records and, to the extent that certain

records were not made available, Columbus State's reasons for denying those requests were proper.

{¶68} Based on the foregoing, it is this magistrate's decision that relator has not demonstrated that she is entitled to a writ of mandamus, nor has relator demonstrated that she is entitled to an award of statutory damages, attorney fees and court costs. As such, this court should deny relator's request for a writ of mandamus.

/s/ Stephanie Bisca Brooks

STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).