[Cite as *State ex rel. Dehler v. Spatney*, 2010-Ohio-3052.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO ex rel. LAMBERT DEHLER,	:	**PER CURIAM OPINION**
Relator,	:	**CASE NO. 2009-T-0075**
- vs -	:	
JERRY SPATNY, DEPUTY WARDEN OF THE TRUMBULL CORRECTIONAL INSTITUTION, et al.,	:	
Respondents.	:	

Original Action for Writ of Mandamus.

Judgment: Writ denied.

Lambert Dehler, PID: #273-819, Mansfield Correctional Institution, P.O. Box 788, Mansfield, OH 44901-0788 (Relator).

Richard Cordray, Ohio Attorney General, and *Ashley D. Rutherford*, Assistant Attorney General, Corrections Litigation Section, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondents).

PER CURIAM.

{¶1} This action in mandamus is presently before this court for final disposition of the parties' competing motions for summary judgment. Upon reviewing each side's respective evidentiary materials and legal arguments, this court holds that respondents have demonstrated that they are not legally obligated to allow relator to inspect or copy certain public records within their possession. Specifically, we conclude that relator is

not entitled to a writ of mandamus because his own factual allegations indicate that he has failed to make a proper "records" request under R.C. 149.43(B).

{¶2} Prior to December 2009, relator, Lambert Dehler, was incarcerated in the Trumbull Correctional Institution in Leavittsburg, Ohio. During the course of his stay at the prison, relator became embroiled in a dispute regarding the manner in which various clothing items were ordered and distributed to the inmates. The dispute involved many of the prison officials and employees, including: (1) Jerry Spatny, Deputy Warden; (2) Jacqueline Scott, Business Office Administrator; (3) Shalimar Douglas, Quartermaster Coordinator; and (4) Robbyn Ware, Public Record Coordinator.

{¶3} While the "clothing" dispute was ongoing, relator submitted a document to Administrator Scott which was captioned as an "Informal Complaint Resolution." In this document, relator made a request for public records pertaining to the dispute. That is, the document stated that he sought the following:

{¶4} "A copy of all Quartermaster records from 1/1/2002 through 2/7/2009; specifically as follows: Copies of any notes, correspondences (electronic or otherwise), memorandum, or any other record that pertains to the Quartermaster ordering clothing and receiving clothing orders from 1/1/2002 through 2/7/2009 showing the date ordered and quantities of inmate clothing received."

{¶5} On approximately the same date that relator made his written submission to Administrator Scott, he also sent a copy of his public records request to Terry Collins, Director of the Ohio Department of Rehabilitation and Corrections. Director Collins did not take any specific action concerning relator's request, but instead referred the matter back to the institution for consideration.

{¶6} Within four days of receiving the foregoing submission, Administrator Scott informed relator through a written response that his "records" request would be denied for the reason that it was too broad and vague. Relator immediately filed a grievance as to Administrator Scott's determination. Ultimately, the grievance procedure resulted in a finding that no violation of the institution's policy had occurred because relator had filed his request with the wrong individual.

{¶7} Although relator pursued an appeal of the "grievance" ruling, he also filed a new "records" request with Robbyn Ware, who acts as the public records coordinator for the Trumbull Correctional Institution. This new request was virtually identical to his original request; i.e., he asked to inspect or copy all records produced by Quartermaster Douglas over the preceding seven years as to the ordering and distribution of prisoner clothing, boots, and shoes.

{¶8} After initially sending relator a written response, Coordinator Ware held a meeting with him which lasted for approximately one hour. During the course of their meeting, relator and Coordinator Ware discussed whether it would be possible for him to narrow the scope of his request, including the number of years involved. However, the meeting concluded before any type of compromise could be reached.

{¶9} Three weeks after their meeting, Coordinator Ware sent relator a second written response concerning the "records" request. Even though the second response did not indicate that a final decision had been rendered on the matter, it did reiterate the concern that relator's document request was overly broad. As to this point, Coordinator Ware noted that relator's actual inspection of the records would be difficult because his request would cover thousands of documents. She further noted that locating some of

the records could pose a problem because, due to their age, they were no longer stored at the institution.

{¶10} Despite the fact that relator continued to file grievances pertaining to his "records" request, the prison officials took no additional steps to give him access to the documents in question. As a result, in August 2009, relator instituted the instant action for a writ of mandamus. In his petition, relator asserted two claims regarding the denial of his public records request. The first of the claims was against the prison officials and employees, including Deputy Warden Spatny, Administrator Scott, Coordinator Ware, and Quartermaster Douglas. The second was solely against Director Collins.[1] Both of the claims were based upon the same allegations and requested the identical relief: i.e., the issuance of a writ to compel the five respondents to immediately satisfy his "records" request under R.C. 149.43.

{¶11} After the five respondents had answered the mandamus petition, relator moved for summary judgment as to both of his "records" claims. As the grounds for his motion, relator simply argues that, since all five respondents were either public officials or employees of the institution, they have a legal duty under R.C. 149.43(B) to fulfill his public records request. In support of his position, relator has not only attached his own affidavit to the motion, but has also referred to certain exhibits that were attached to his petition.

{¶12} In conjunction with their written response to relator's motion, respondents have also filed a competing motion for relief under Civ.R. 56(C). In asserting that relator

1. While this litigation was pending, Ernie Moore replaced Terry Collins as the Director of the Ohio Department of Rehabilitation and Corrections. Since the position of director is a public office, Moore's substitution as the proper party to the action is permissible under Civ.R. 25(D)(1).

cannot satisfy the elements for a writ, respondents primarily maintain that they have no legal obligation to give him access to the past records of the quartermaster because his request is not sufficiently definite to invoke the governing statute. Basically, they assert that the scope of relator's request is so broad that, instead of asking for limited copies of specific documents, he is actually seeking a complete duplicate of all papers contained in the quartermaster's various files. In addition, respondents contend that the request is so unreasonable that their ability to maintain the integrity of the subject records could be compromised in attempting to satisfy relator.

{¶13} In support of their separate motion, respondents submitted the affidavit of Coordinator Ware. In this document, Coordinator Ware did not address the issue of the scope of relator's "records" request; rather, her averments only pertained to a separate argument which was also raised in respondents' motion. Specifically, her affidavit only addressed the alleged events which had occurred during her meeting with relator, and whether she and the other employees had taken sufficient steps to reach a compromise with him.

{¶14} In responding to the opposing motion for summary judgment, relator again submitted a new affidavit as his sole evidentiary material. Our review of relator's new averments readily shows that he only tried to refute Coordinator Ware's statements as to the nature of their conversation during their sole meeting. The new affidavit does not set forth any assertions concerning the scope of his public records request. Similarly, a review of relator's brief in response shows that he has not tried to contest respondents'

legal argument regarding the broadness of his document request.[2]

{¶15} In presenting their respective affidavits, both sides have focused upon the question of which side acted in good faith in attempting to negotiate a compromise of the matter during the meeting of relator and Coordinator Ware. Upon considering the relevant case law interpreting R.C. 149.43, this court concludes that it is not necessary to address the "compromise" dispute for purposes of resolving this action. Specifically, we hold that our final determination as to the merits of both mandamus claims can be based solely upon our disposition of respondents' "broadness" argument.

{¶16} In regard to the actual scope of relator's public records request, our review of all of the submitted evidentiary materials reveals that there is no factual dispute as to the exact language of his request. That is, there has been no challenge to the fact that the language quoted in relator's petition constitutes the precise wording which he used in submitting his request to the prison officials. As was noted above, the request plainly indicated that relator was seeking to inspect or copy all of the quartermaster's "clothing" records for a seven-year period.

{¶17} Pursuant to R.C. 149.43(B)(2), any person or public office that is required to maintain any public records is also obligated to organize the records in such a manner that they can be readily accessible for inspection by the public. In light of this express duty, R.C.149.43(B)(1) states that, "[u]pon request ***, all public records

2. As part of his response brief, relator requested this court to strike the affidavits of Supervisor McCullough and Coordinator Ware on the grounds that both documents contained certain falsehoods. As to this point, we would indicate that any question as to the credibility of an affiant's factual statements cannot be made in the context of a summary judgment exercise. Instead, our review of the statements is limited to deciding if any factual conflicts exist. Under such circumstances, relator's reference to possible false statements is not a proper reason for striking the affidavits. Moreover, this court would emphasize that we have not predicated our final decision in this matter upon any averments in either of the disputed affidavits.

responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." The latter section further states 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."

{¶18} In delineating the two basic obligations which the holder of public records owes to a member of the public, R.C. 149.43(B)(1) specifically refers to the submission of a "request" to inspect or copy any qualifying document. In interpreting the foregoing statutory language, Ohio courts have indicated that the mere filing of a "general" request for documents is not sufficient to invoke the two basic duties and require a response on the part of the responsible office or person. See, e.g., *State ex rel. Zauderer v. Joseph* (1989), 62 Ohio App.3d 752. Instead, before any right to inspect or copy public records will exist, the submitted request must particularly describe the specific documents which are sought. *State ex rel. Farley v. McIntosh* (1998), 134 Ohio App.3d 531, 534. When a "records" request is stated in general terms, it is deemed unenforceable because it is too vague or indefinite to be properly acted upon by the "records" holder. *State ex rel. Strothers v. Murphy* (1999), 132 Ohio App.3d 645, 650.

{¶19} In *Zauderer*, supra, the relator filed the mandamus action to compel three police officials to give him access to all traffic accident reports of record. In ultimately holding that the issuance of the writ was not warranted under R.C. 149.43(B), the Tenth Appellate District concluded its legal analysis in the following manner:

{¶20} "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 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." *Zauderer*, 62 Ohio App.3d at 756.

{¶21} The foregoing legal analysis in *Zauderer* has been cited by the Supreme Court of Ohio in disposing of subsequent mandamus proceedings under R.C. 149.43. For example, in *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, a member of the state employee retirement program asked a representative in the state general assembly to provide copies of all e-mails, text messages, and correspondences that the representative had either sent or received over a six-month period. When the representative only provided a limited number of documents, the member instituted his mandamus action before the Supreme Court. In denying the writ and entering judgment for the representative, the *Glasgow* court predicated its decision in part upon the holding that the member's request had been improper as overly broad. In support of this point, the *Glasgow* court emphasized that: (1) a request to inspect or copy public records must be stated with reasonable clarity so that the deputed documents can be identified; and (2) R.C. 149.43 does not give a private citizen the ability to request a full set of copies of large files of documents. Id. at ¶17.

{¶22} In the instant case, the scope of relator's "records" request is comparable

to those in *Glasgow* and *Zauderer*. In setting forth his request in the body of his petition for relief, relator did not refer to specific documents rendered on exact dates. Instead, he expressly stated that he was seeking all notes, correspondences, memoranda, and any other record that pertained to the ordering and distribution of inmate clothing. In addition, he also stated that his request was intended to cover the seven-year period from January 2002 through February 2009.

{¶23} Given the foregoing parameters, it cannot be disputed that relator wanted to obtain a complete duplication of the quartermaster's paperwork for a substantial time span. To this extent, the request in question was clearly overbroad, and any attempt to satisfy the request would have interfered with the integrity of the recordkeeping process. Thus, relator has failed to properly invoke the procedure under R.C. 149.43 because his request for public records is not enforceable under the governing case law.

{¶24} As an aside, this court would note that relator's second affidavit had the statement that, as part of his meeting with Coordinator Ware, he had offered to limit the extent of his request to the preceding three years. However, in making this averment, relator was only responding to respondents' separate argument that he had not been willing to reach a compromise on the matter. In asserting his legal arguments before this court, relator has never indicated that, for purposes of this litigation, he was modifying his "records" request to only three years. Furthermore, we would emphasize that, even if his request had been so modified, the outcome of our legal analysis would have been the same.

{¶25} Finally, it should also be noted that, as part of his mandamus petition, relator raised a separate claim concerning access to the prison law library. During the

pendency of this action, though, relator voluntarily dismissed that particular claim under Civ.R. 41(A).

{¶26} To be granted summary judgment under Civ.R. 56(C), the moving party must demonstrate that: (1) there are no genuine issues of material fact remaining to be litigated; (2) he is entitled to final judgment as a matter of law; and (3) the nature of the evidentiary materials are such that, even when they are interpreted in a manner most favorable to the non-moving party, a reasonable person could only reach a conclusion against the non-moving party. *State ex rel. Zimcosky v. Collins*, 11th Dist. No. 2009-L-141, 2010-Ohio-1716, at ¶19. In light of the foregoing discussion, this court holds that respondents have satisfied this standard in relation to both of relator's public records claims. That is, under the undisputed facts pertaining to the scope of relator's request, respondents are entitled to prevail as a matter of law because the request was manifestly too broad to be enforceable under R.C. 149.43.

{¶27} Accordingly, respondents' motion for summary judgment is granted. It is the order of this court that final judgment is hereby entered in favor of respondents as to both of relator's remaining claims in mandamus.

MARY JANE TRAPP, P.J., DIANE V. GRENDELL, J., COLLEEN MARY O'TOOLE, J., concur.