

# Court of Claims of Ohio

## Victims of Crime Division

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
[www.cco.state.oh.us](http://www.cco.state.oh.us)

IN RE: BAMBI DAMERON

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Applicant

Case No. 2014-00171-VI

Magistrate Robert Van Schoyck

### DECISION

{¶1} This matter came on to be considered upon the Attorney General's appeal from the June 19, 2014 order issued by the panel of commissioners. The panel's determination reversed and remanded the final decision of the Attorney General, which denied a supplemental compensation application on the basis that it did not include a release signed by applicant.

{¶2} An applicant has the burden of proof to satisfy the court of claims commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios*, 8 Ohio Misc.2d 4 (Ct. of Cl.1983), citing former R.C. 2743.52(A).

{¶3} There is no dispute that on January 6, 2009, applicant filed a compensation application seeking reimbursement for attorney fees incurred to obtain a civil protection order. The compensation application included a signed release from applicant, dated November 14, 2007, and the application specified that the release was "valid for a period of two years without any further consent by me." On May 8, 2009, the Attorney General issued a finding of fact and decision denying the claim on the basis that applicant had an active arrest warrant for a felony charge of receiving stolen property. On August 9, 2013, applicant's attorney filed his supplemental compensation application seeking

reimbursement for his fees in obtaining the civil protection order. The supplemental compensation application included a release signed by applicant's attorney rather than applicant. Applicant's attorney represents that he cannot locate applicant.

{¶4} The panel found that the Attorney General's decision to deny the supplemental compensation application was unreasonable, finding that "a current release from applicant is not required to complete the investigation of this matter inasmuch as the Attorney General has the authority to obtain applicant's criminal record and determine whether that record warrants denial of this claim." The panel consequently ordered that the case be remanded to the Attorney General for decision.

{¶5} Pursuant to Civ.R. 53, the court appointed the undersigned magistrate to hear the Attorney General's appeal. The case came on for a hearing before the magistrate on September 19, 2014. Assistant Attorneys General Kristin Boggs and Yan Chen appeared for the hearing in person. Neither applicant nor her attorney appeared.

{¶6} The standard for reviewing claims appealed from the panel of commissioners is established by the version of R.C. 2743.61(C) that was in effect prior to the amendment of that statute on July 10, 2014. Former R.C. 2743.61(C) stated, in part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final."

{¶7} Upon review of the file in this matter, the magistrate concludes that the decision of the panel of commissioners was unlawful and unreasonable.

{¶8} Pursuant to R.C. 2743.56(A), an application must "include a release authorizing the attorney general and the court of claims to obtain any report, document, or information that relates to the determination of the claim for an award of reparations that is requested in the application." Here, applicant signed the release included within the original application, but she did so on November 14, 2007. The application, which

was in a form prescribed by the Attorney General pursuant to authority conferred upon him under R.C. 2743.56(A), expressly provided that the release was valid for two years. When applicant's attorney filed the supplemental application on August 9, 2013, the original release was no longer valid and applicant did not submit a new release. Therefore, the supplemental application did not comply with R.C. 2743.56(A).

{¶9} Although applicant's attorney affixed his own signature to the release included within the supplemental application, he does not qualify as a person who may claim an award of reparations. See R.C. 2743.51(A) (defining "claimant"). Rather, applicant's attorney qualifies as a "provider" of services to the victim, as defined in R.C. 2743.51(V), and it has been held that one's status as a provider does not confer standing to act as a claimant. *In re Lawrence Cty. Gen. Hosp.*, Ct. of Cl. No. V77-0644 (Mar. 6, 1979).

{¶10} The panel of commissioners acknowledged the requirement in R.C. 2743.56(A) that an application must include a release, but, citing former R.C. 2743.55(A) and 2743.59, the panel went on to conclude that "the Attorney General has broad statutory power to investigate claims for an award of reparations, including the authority to issue subpoenas and order law enforcement agencies to provide information and data necessary to issue a finding of fact and decision." The panel thus concluded that, based upon the Attorney General's statutory investigative authority, applicant need not submit a release.

{¶11} R.C. 2743.59(A) places a duty upon the Attorney General to investigate claims for awards of reparations and, upon completing the investigation, to make a written finding of fact and decision. Among the things that must be included in the Attorney General's finding of fact and decision is any evidence demonstrating that the victim has been convicted of a felony or has a record of felony arrests, or that disqualifying conditions exist under R.C. 2743.60(E). R.C. 2743.59(C)(6).

{¶12} Although the panel noted the Attorney General's authority under former R.C. 2743.55(A) to order law enforcement officers to provide information, that statute

specifically referred to “information or data gathered in the investigation of the criminally injurious conduct that is the basis of the claim \* \* \*.” The statute did not refer to obtaining an applicant’s criminal record or other information that was not gathered in the investigation of the criminally injurious conduct at issue in the claim.

{¶13} The panel also noted the Attorney General’s authority under R.C. 2743.59 to issue subpoenas. What that statute provides, however, in regard to the Attorney General’s subpoena power, is that subpoenas may be issued “to compel any person or entity, including any collateral source, that provided, will provide, or would have provided to the victim any income, benefit, advantage, product, service, or accommodation, including any medical care or other income, benefit, advantage, product, service, or accommodation that might qualify as an allowable expense or a funeral expense, to produce materials to the attorney general that are relevant to the income, benefit, advantage, product, service, or accommodation that was, will be, or would have been so provided and to the attorney general’s determination.” R.C. 2743.59(B)(2)(a). Again, this statute does not pertain to the procurement of an applicant’s criminal record.

{¶14} While the Attorney General does have a general duty under R.C. 2743.59(A) to investigate reparations claims, it is equally apparent from the language enacted by the General Assembly in R.C. 2743.56(A) that as a precondition to the Attorney General exercising the investigatory power to obtain “any report, document, or information that relates to the determination of the claim,” the applicant must provide her consent in the form of a release.

{¶15} R.C. 2743.56(A) sets forth no exceptions, nor do the statutes cited by the panel or the other statutes within the Crime Victims Act furnish a basis for recognizing an exception. *See also Hughes v. Registrar, Ohio Bur. of Motor Vehicles*, 79 Ohio St.3d 305, 308 (1997) (In construing statutes pertaining to the same general subject matter, courts must attempt to harmonize and give full application to all provisions.). Moreover, it is axiomatic that statutes are to be construed to give effect to all their provisions, such

that no part is rendered inoperative, superfluous or insignificant. *Corley v. United States*, 556 U.S. 303, 314 (2009). The magistrate concludes that the language in R.C. 2743.56(A) requiring that an application “include a release authorizing the attorney general \* \* \* to obtain any report, document, or information that relates to the determination of the claim” must be given effect. It would therefore be unlawful for the Attorney General to proceed to decision on this claim without the statutorily-required consent. It would also be unreasonable, considering that the Attorney General’s investigation, findings of fact and decision, as well as any appeals therefrom, may place information about the victim at issue and subject her to unwanted or adverse publicity.

{¶16} Finally, with regard to the argument of applicant’s attorney that a release is unnecessary insofar as the relevant evidence to be obtained by the Attorney General would constitute a “public record” under R.C. 149.43, information such as a person’s criminal record that is generated from the databases the Attorney General uses in the course of carrying out the duties to investigate and issue a written finding of fact and decision is not a matter of public record. R.C. 109.57(D); *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 144 (1995); *Anthony v. Wonnell*, 10th Dist. Franklin No. 91AP-995 (Apr. 7, 1992); see also Ohio Adm.Code 109:5-1-01(A) (requiring that any person seeking to obtain to the criminal record of any other person maintained at the Bureau of Criminal Identification must submit, among other things, “[t]he signed consent of the individual whose records are sought”).

{¶17} Regardless, the language in R.C. 2743.56(A) plainly requires a release and makes no exceptions relating to public records or otherwise. Indeed, the Public Records Act has no application in this case. “[T]he purpose of Ohio’s Public Records Act, R.C. 149.43, is to expose government activity to public scrutiny \* \* \*.” *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 355 (1997). In contrast, “[t]he purpose of the Victims of Crime Act is to reimburse innocent victims of crime for economic loss incurred as the result of criminal conduct.” *In re Anderson*, 57 Ohio Misc.2d 31, 32 (Ct. of Cl.1989).

“Certain well-defined persons have a right to participate in the reparations fund under specific statutory conditions. The right to participate in the fund is controlled via compliance with special criteria and prudent restrictions contained within the statute.” *In re Van Horn*, Ct. of Cl. Nos. V2006-20241 & V2006-20321, 2007-Ohio-3493, ¶ 6. In this case, the statutory conditions for obtaining an award have not been met.

{¶18} Therefore, it is recommended that the decision of the panel of commissioners be reversed and that the supplemental compensation application be denied.

{¶19} *A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. 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 within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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ROBERT VAN SCHOYCK  
Magistrate

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to: