[Cite as *Sandine v. Argyle*, 2018-Ohio-1537.]

ERIC P. SANDINE Requester v. JAMIE ARGYLE Respondent	Case No. 2017-00891-PQ Special Master Jeffery W. Clark REPORT AND RECOMMENDATION

{¶1} Ohio's Public Records Act, R.C. 149.43, provides a remedy for production of records under R.C. 2743.75 if the court of claims determines that a public office denied a person access to public records in violation of R.C. 149.43(B). R.C. 149.43(C)(1)(a). R.C. 149.43(B)(1) requires a public office to make copies of public records available to any person upon request, within a reasonable period of time. The policy underlying the Public Records Act is that "open government serves the public interest and our democratic system." *State ex rel. Dann v. Taft,* 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472, ¶ 20. "[O]ne of the salutary purposes of the Public Records Law is to ensure accountability of government to those being governed." *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158, 684 N.E.2d 1239 (1997). Therefore, the Public Records Act "is construed liberally in favor of broad access, and any doubt is resolved in favor of disclosure of public records." *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 376, 662 N.E.2d 334 (1996).

{¶2} Requester Eric Sandine made a public records request to respondent Jamie Argyle, Fiscal Officer, Village of Lithopolis for "any records showing that any employee having [sic] a judgement or garnishment or notice including, but not limited to, child support arrearage from any State or County or individual in the last two years." (Complaint at 5-6.). On October 13, 2017, Argyle advised that the request was denied based on R.C. 3125.50. (*Id*. at 3-4.) On November 1, 2017, Sandine filed a complaint alleging denial of

access to public records in violation of R.C. 149.43(B). The case proceeded to mediation. On December 11, 2017, the court was notified that the case was not fully resolved. On December 26, 2017, Argyle filed her motion to dismiss (Response).

{¶3} R.C. 2743.75(F)(1) states that determination of public records claims shall be based on "the ordinary application of statutory law and case law." Case law regarding the alternative public records remedy under R.C. 149.43(C)(1)(b) provides that a relator must establish by "clear and convincing evidence" that they are entitled to relief. *State ex rel. Miller v. Ohio State Hwy. Patrol,* 136 Ohio St.3d 350, 2013-Ohio-3720, ¶ 14. Therefore, the merits of this claim shall be determined under the standard of clear and convincing evidence, i.e., "that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. *Accord Hurt v. Liberty Twp*., 5th Dist. Delaware No. 17CAI050031, 2017-Ohio-7820, ¶ 27-30.

Motion to Dismiss

{¶4} Argyle moves to dismiss the complaint for failure to state a claim upon which relief can be granted. Civ.R. 12(B)(6). In construing this motion, the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co*., 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. Univ. Community Tenants Union, Inc*., 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975). The unsupported conclusions of a complaint are, however, not admitted and are insufficient to withstand a motion to dismiss. *Mitchell* at 193. The claim of a violation of R.C. 149.43(B) may be dismissed when the requester has no legal right to the records sought under R.C. 149.43. *State ex rel. GMS Mgmt. Co. v. Vivo*, 7th Dist. Mahoning No.

10MA1, 2010-Ohio-4184, ¶ 24-28 (Sup.R. 44-47, not R.C. 149.43, control access to court records).

{¶5} Argyle asserts that the claim should be dismissed because, 1) Sandine's request is overly broad and ambiguous, 2) the requested records are excepted from the definition of "public record" by R.C. 5101.13 and R.C. 5101.131, and 3) the records contain "personal information" excepted from disclosure by R.C. 149.45.[1] I find that none of these defenses are conclusively established on the face of the complaint. Further, Argyle's email responses to the request did not refer to the request as overly broad, or cite R.C. 5101.13, R.C. 5101.131, or R.C. 149.45. (Complaint at 3-5.) I therefore recommend that the motion to dismiss be denied, and that the court determine the case on the merits.

Ambiguous or Overly Broad Request

{¶6} R.C. 149.43(B)(2) addresses ambiguous and overly broad requests:

> a. 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.

In making a request, "it 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. Zidonis v. Columbus State Cmty. College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶ 21. For example, a request for an entire category of records is improper:

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[1] Although Argyle did not cite these bases in her response to Sandine's request, she may raise them in defense of this litigation. "The explanation [provided when denying a request] shall not preclude the public office or person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section." R.C. 149.43(B)(3).

> b. 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.

State ex rel. Zauderer v. Joseph, 62 Ohio App.3d 752, 756, 577 N.E.2d 444 (10th Dist.1989) (all traffic accident reports); *accord, Zidonis* (all complaint files, all litigation files); *State ex rel. Dehler v. Spatny*, 127 Ohio St.3d 312, 2010-Ohio-5711, 939 N.E.2d 831, ¶ 3 (all orders for clothing and shoes). However, a sufficiently specific request contained within an otherwise overly broad request may be enforceable. In *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, the Court found overly broad a request for *all* of a state representative's email for a period of six months, but language that the request was "including, but not limited to" a particular house bill was separately sufficient as a request narrowly relating to the named bill. *Id*. at ¶ 1, 17-24.

{¶7} A records request is also unenforceable if it is too vague or indefinite to be properly acted on by the records holder. *State ex rel. Dehler v. Spatny*, 11th Dist. No. 2009-T-0075, 2010-Ohio-3052, ¶ 18, *aff'd*, 127 Ohio St.3d 312, 2010-Ohio-5711. Indeed, without sufficient specificity for the court to order clear terms of compliance with the request, the court cannot enforce any alleged non-compliance. Such a request may be denied as improperly ambiguous.

{¶8} Separately, a public office is not obliged to "seek out and retrieve those records which would contain the information of interest to the requester." *State ex rel. Fant v. Tober*, 8th Dist. Cuyahoga No. 63737, 1993 Ohio App. LEXIS 2591, *3 (April 28, 1993). A request asks for "improper research" if it

> c. require[s] the government agency to either search through voluminous documents for those that contain certain information or to create a new document by searching for and compiling information from existing records. *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶ 30-31, 35, 857

> N.E.2d 1208; *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273, 274, 1998 Ohio 242, 695 N.E.2d 256 (1998).

State ex rel. Carr v. London Corr. Inst., 144 Ohio St.3d 211, 2015-Ohio-2363, 41 N.E.3d 1203, ¶ 22. The Eighth District Court of Appeals upheld denial of a request similar to Sandine's, for "records containing certain information – personal injury claims," after summarizing "the well-established authority prohibiting the use of a purported request for public records to require a public office or person responsible for public records 'to search for records containing selected information.'" *State ex rel. O'Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 190 Ohio App.3d 218, 2010-Ohio-3416, ¶ 7-11 (8th Dist.), *rev'd in part on other grounds*, 131 Ohio St.3d 149, 2012-Ohio-115, *see State ex rel. McElroy v. Polito*, 8th Dist. Cuyahoga No. 77042, 1999 Ohio App. LEXIS 5683 (Nov. 30, 1999) (no duty to gather all marriage license applications from a specified year, where no collection or index of such records existed); *State ex rel. Evans v. Parma*, 8th Dist. Cuyahoga No. 81236, 2003-Ohio-1159, ¶ 14-17 (no duty to search for all reports involving a geographic area).

{¶9} Sandine's request is for "any records showing that any employee having [sic] a judgement or garnishment or notice including, but not limited to, child support arrearage from any State or County or individual in the last two years." "*Any records*" requires an unbounded search through all office communications, employment, fiscal, and other categories of records. In *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 314, 750 N.E.2d 156 (2001), the Court found that Dillery's demand for "any and all records generated" by the office with her name failed to satisfy her duty to identify the records she wanted with sufficient clarity. Sandine's request is expressly "not limited to" any subject or content of the legal instruments, *see Zidonis* at ¶ 26, with one exception: the "includ[ed]" request for "child support arrearage from any State or County or individual" is more content-specific, yet still requires improper research as there is no evidence that

respondent maintains its records such that it can retrieve documents based on that description. *McElroy*, *Id*. Notably, the permitted sub-request in *Glasgow* was limited to "email," while Sandine's is for "*any records showing*" an employee subject to the legal document. I find that the entire request is overly broad and ambiguous because it refers to any judgment, garnishment or notice, without limitation to subject or specific employees. Even the sub-request for "any record showing * * * child support arrearage" is an overly broad and ambiguous demand for any records within the office "showing" a topic. I find that the request is separately improper because it requires a search through all of the village's communications, employment, and fiscal records for information, rather than for reasonably identified records. *Carr*, *Id*.

{¶10} The Public Records Act requires parties to cooperate in clarifying ambiguous and overly broad requests, with the goal of identifying the specific records sought. When such a request is denied, R.C. 149.43(B)(2) requires the public office to

> d. 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.

Argyle did not deny the improper requests on this basis prior to Sandine filing this action, or provide Sandine with the required opportunity to revise the request by informing him of how its records are maintained and accessed. This constitutes a *per se* violation of R.C. 149.43(B)(2). *State ex rel. ESPN v. Ohio State Univ*., 132 Ohio St.3d 212, 2012-Ohio-2690, 970 N.E.2d 939, ¶ 10-11; *see State ex re. O'Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.,* 131 Ohio St.3d 149, 2012-Ohio-115, 962 N.E.2d 297, ¶ 20-21 (lack of initial response that request was ambiguous or overbroad is factor to consider in propriety of request). However, as in *ESPN*, Sandine does not ask that Argyle be ordered to inform him of the way the Village of Lithopolis maintains its records, and thus is not entitled to relief other than this finding of violation. *Id*. at ¶ 12-15.

{¶11} I therefore recommend that Sandine's request be found to be both overly broad and ambiguous, and an improper request for respondent to search through its records to find information of interest to the requester.

Requested Documents Are Not "Records" of the Village

{¶12} Sandine is entitled to relief only if he requested "records" that are subject to the Public Records Act. "Records" is defined in R.C. 149.011(G) as:

> e. any document, device, or item, regardless of physical form or characteristic, * * *, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

The definition of "record" does not include every piece of paper on which a public officer writes something, or every document received by a public office. *State ex rel. Cincinnati Enquirer v. Ronan*, 127 Ohio St.3d 236, 2010-Ohio-5680, 938 N.E.2d 347, ¶ 13. With respect to public employees, "[t]o the extent that any item contained in a personnel file is not a "record," *i.e.*, does not serve to document the organization, etc., of the public office, it is not a public record and need not be disclosed." *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 188, 610 N.E.2d 997 (1993). A requester must establish that requested personnel items "create a written record of the structure, duties, general management principles, agency determinations, specific methods, processes, or other acts of the [public office]." *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274, ¶ 22. Thus, documents used only for the ubiquitous functions of an office *as an employer* may not constitute a "record" of the office. For example, the home addresses of state employees, compiled only for administrative convenience, are not generally "records" of a public office. *Dispatch* at ¶ 17-41. This is fully consistent with the purposes of the Public Records Act:

> f. As we noted in *McCleary*, disclosure of information about private citizens is not required when such information "'reveals little or

> nothing about an agency's own conduct'" and "would do nothing to further the purposes of the Act." 88 Ohio St.3d at 368 and 369, 725 N.E.2d 1144, quoting *United States Dept. of Justice v. Reporters Commt. for Freedom of the Press* (1989), 489 U.S. 749, 780, 109 S.Ct. 1468, 103 L.Ed.2d 774.

State ex rel. Beacon Journal Publ'g Co. v. Bond, 98 Ohio St.3d 146, 2002-Ohio-7117, 781 N.E.2d 180, ¶ 9-13. *Accord Dispatch* at ¶ 27. *See International Union, United Auto., Aerospace & Agric. Implement Workers v. Voinovich*, 100 Ohio App.3d 372, 376, 654 N.E.2d 139 (10th Dist.1995) (official's personal calendars and appointment books); *State ex rel. Wilson-Simmons v. Lake County Sheriff's Dep't*, 82 Ohio St.3d 37, 41, 693 N.E.2d 789 (1998) (personal email, not used to conduct business of the office); *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 25 (texts that did not document work-related matters).

{¶13} The records sought by Sandine document the personal legal obligations of employees, not their performance of work comprising the "organization, functions, policies, decisions, procedures, operations, or other activities" of the public office. *Dispatch* at ¶ 26. While such judgments, orders, and notices are records in the hands of the courts that issue them, they do not document the governmental functions of the public employer processing the garnishment or other adjudicatory consequences. *See generally State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274, ¶ 25-29. *See State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 366, 2000-Ohio-345, 725 N.E.2d 1144; *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 188, 610 N.E.2d 997 (1993); *but see State ex rel. Jones v. Myers*, 61 Ohio Misc.2d 617, 581 N.E.2d 629 (C.P.1991) (garnishments and support payments not exempt under invasion of privacy test – but court did not analyze orders' status as "records" under R.C. 149.011(G)). "Inherent in Ohio's Public Records Law is the public's right to monitor the conduct of government," *Dispatch* at ¶ 27, citing *McCleary*, but disclosure of employee income withholding and other private adjudicatory matters would not further the purposes of the Act.

{¶14} As noted in *Dispatch* at ¶ 39, it is conceivable that such an item could become a record if it was actually used to document a governmental function of the office, for example if a court judgment is relied on by the office in a disciplinary or ethics proceeding. No such circumstance is alleged here, nor would the office be obliged to conduct a search of its discipline and other employment files for such items, as noted in the section above on overly broad and ambiguous requests. I find that Sandine fails to show by clear and convincing evidence that any documents held by the village showing "judgment or garnishment or notice, including but not limited to child support arrearage" meet the definition of a "record" under R.C. 149.011(G).

Application of Claimed Exceptions

{¶15} R.C. 149.43(A)(1) sets forth specific exceptions from the definition of "public record," as well as a catch-all exception for "[r]ecords the release of which is prohibited by state or federal law." R.C. 149.43(A)(1)(v). The public office bears the burden of proof to establish the applicability of any exception:

> g. Exceptions to disclosure under the Public Records Act, R.C. 149.43, are strictly construed against the public-records custodian, and the custodian has the burden to establish the applicability of an exception. A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception.

State ex rel. Cincinnati Enquirer v. Jones-Kelley, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, ¶ 10. A public office may not utilize an exception that is limited to other agencies. *State ex rel. Beacon Journal Pubg. Co. v. Akron,* 104 Ohio St.3d 399, 2004-Ohio-6557, 819 N.E.2d 1087, ¶ 36-45 (police department could not assert exception applying only to similar reports of children services agencies.); *State ex rel. Gannett Satellite Info. Network v. Petro,* 80 Ohio St.3d 261, 266, 685 N.E.2d 1223 (1997) (auditor could not assert grand jury exception applying only to other officials); *State ex rel. Thomas v. Ohio State Univ.,* 71 Ohio St.3d 245, 247-248, 643 N.E.2d 126 (1994) (state university could not assert federal Freedom of Information Act ("FOIA"), which does not apply to

state agencies); *State ex rel.* James *v. Ohio State Univ.,* 70 Ohio St.3d 168, 170, 637 N.E.2d 911 (1994) (university promotion/tenure evaluators could not assert they were "confidential informants" under exception applying only to law enforcement agencies).

Statewide Automated Child Welfare Information System (SACWIS)

{¶16} Under R.C. 5101.13, the Ohio department of job and family services has established and maintains a uniform statewide child welfare information system (SACWIS) that contains records regarding the following:

(1) Investigations of children and families, and children's care in out-of-home care, in accordance with sections 2151.421 and 5153.16 of the Revised Code;
(2) Care and treatment provided to children and families;
(3) Any other information related to children and families that state or federal law, regulation, or rule requires the department or a public children services agency to maintain.

R.C. 5101.13(A). The claimed public records exception is contained in R.C. 5101.131:[2]

> h. Except as provided in section 5101.132 of the Revised Code, information contained in or obtained from the information system established and maintained under section 5101.13 of the Revised Code is confidential and is not subject to disclosure pursuant to section 149.43 or 1347.08 of the Revised Code.

{¶17} Argyle correctly cites *Jones-Kelley,* 118 Ohio St.3d 81, 2008-Ohio-1770 at ¶ 32 for the proposition that "[i]n general, information contained in or obtained from the information system established and maintained under section 5101.13 of the Revised Code is confidential and is not subject to disclosure pursuant to section 149.43 or 1347.08 of the Revised Code." However, respondent makes no effort to show that any child support arrearages or other information withheld here falls squarely within the exception, stating only that "[i]nformation, such as child support payments, are part of the uniform statewide automated child support information system." (Response, fn. 2.) Respondent

[2] R.C. 5101.132 and R.C. 5101.133 provide additional limitations on disclosure that do not affect the analysis of this matter.

provides no affirmative evidence, by affidavit or otherwise, and does not state that any information it holds was actually obtained from SACWIS.

{¶18} Accepting *arguendo* Argyle's narrow claim that "child support *payments*" are "part of" SACWIS, Argyle has submitted no evidence on whether any judgement or garnishment or notice, including, but not limited to, child support arrearages in its keeping were "contained in or obtained from" SACWIS.[3] In *Jones-Kelley* at ¶ 33, the director testified that some of the requested names and addresses of foster caregivers "were being entered into SACWIS," but conceded that "'some names and addresses are not yet protected under R.C. 5101.13[1]' because they have not been entered," and "submitted no evidence on how many, if any, foster caregivers' names and addresses were contained in SACWIS at the time of the Enquirer's request." The Court found that absent evidence showing that the particular information withheld fit the terms of the exception, the information was not excepted. *Id*. at ¶ 22-34.

{¶19} I find that respondent has failed to provide legal support for the assertion that R.C. 5101.131 applies to the types of legal instruments described by requester, in the hands of an employer. I further find that respondent has submitted no factual evidence as to which, if any, of the documents in his hands fit the claimed exception. I conclude that respondent has failed to meet his burden to show that R.C. 5101.131 applies to any withheld document.

R.C. 3125.50

{¶20} In her email response to Sandine's request, Argyle stated that the request "has been denied for the following: 3125.50." Argyle provided no other factual or legal explanation. Respondent did not assert R.C. 3125.50 in her response, and thus appears to have abandoned the exception. However, I will address it briefly.

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[3] The court need not reach the question of whether the protection of information "contained in" SACWIS applies only during its storage in the system, or also to documents outside of the system that coincidentally contain the same information, since respondent provides no evidence that any documents withheld in this case fall under either category.

{¶21} Chapter 3125 is titled "Title IV-D Child Support Cases." As used in the chapter, "Title IV-D case" means any case in which a child support agency is enforcing a child support order pursuant to Title IV-D of the Social Security Act, 88 Stat. 2351 (1975), 42 U.S.C. 651, as amended. R.C. 3125.01. R.C. 3125.50 provides:

> i. Except as provided by the rules adopted pursuant to section 3125.51 of the Revised Code, no person shall do either of the following:
>
> (A) Disclose information concerning applicants for and recipients of Title IV-D support enforcement program services provided by a child support enforcement agency;
>
> (B) Disclose any information collected pursuant to section 3125.41, 3125.42, or 3125.43 of the Revised Code.

In the only reported case involving this statute, a court approved the redaction of certain personal information from within a "Child/Spousal Support Information Sheet." *Sonoga v. Trumbull Cty. Child Support Enforcement Agency*, 11th Dist. Trumbull No. 2004-T-0110, 2005-Ohio-3616, ¶ 4. However, respondent here has submitted no evidence that any information in any responsive document it holds falls under the definition in R.C. 3125.01 or any statute listed in R.C. 3125.50(B). Thus, even if respondent intended to assert the exceptions in R.C. 3125.50, she has failed to meet her burden to show that they apply in this case, for the same reasons discussed above regarding R.C. 5101.13 and R.C. 5101.131.

Personal Information – R.C. 149.45

{¶22} At Response p. 5, Argyle states, "See also, R.C. 149.45 (prohibiting release of personal information.)" No evidence or further argument is provided as to what records Argyle believes are subject to this statute.

{¶23} R.C. 149.45, titled "Internet access to social security numbers," provides that no public office "shall make available to the general public on the internet" a new or existing document containing an individual's social security number ("SSN"). R.C. 149.45(B). The statute further provides that an individual may request a public office to

redact their SSN and four other items defined as "personal information" from records made available to the general public on the internet. R.C. 149.45(C). Finally, the statute provides that listed public employees may request a public office to redact their address from certain records made available to the general public on the internet. All of these provisions are subject to additional conditions and exceptions.

{¶24} The prohibitions of the statute do not apply to all records kept by a public office, but only to those made available on the internet. Respondent does not assert that the village makes any of the requested records "available to the general public on the internet." I therefore find that respondent fails to show that R.C. 149.45 applies to any document or information responsive to the request.

Motion for Sanctions, Attorney Fees, and Costs

{¶25} Respondent attempts to incorporate a "motion for sanctions, attorneys' fees and costs of defendant" in its responsive pleading filed under R.C. 2743.75(E)(2). Respondent states that "Plaintiff's [sic] Complaint is frivolous," citing R.C. 2323.51(A)(2)(a)(i), (ii); and "See also, Ohio Civ.R.11." Respondent provides no evidence or further argument in support.

{¶26} As part of the "expeditious and economical procedure" contemplated by R.C. 2743.75(A), no motions or pleadings other than the complaint and response/motion to dismiss may be filed "unless the special master directs in writing that a further motion or pleading be filed." R.C. 2743.75(E)(2). The special master hereby declines to direct that Argyle's "motion for sanctions, attorneys' fees and costs of defendant" be filed in this matter. Section B.2. of Argyle's response is thus considered received, but not filed.

{¶27} Even had filing been allowed, the special master would recommend that the motion be summarily overruled. "Simply filing a losing case or appeal is not automatically 'frivolous'" *State ex rel. Bunting v. Styer*, 147 Ohio St.3d 462, 2016-Ohio-5781, 67 N.E.3d 755, ¶ 7. With respect to R.C. 2323.51(A)(2)(a)(i), the complaint and attachments do not reveal any conduct that "obviously serves merely to harass or maliciously injure another

party * * * or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation." The correspondence and pleadings reflect only courteous, concise exchanges regarding documents that Sandine believed to be public records. With respect to R.C. 2323.51(A)(2)(a)(ii) and Rule 11, Sandine's request was plausible under existing law, despite the ultimate recommendations reached by the special master. Argyle provides no evidence or argument to the contrary.

Conclusion

{¶28} Upon consideration of the pleadings and attachments, I recommend that the court OVERRULE respondent's motion to dismiss. I further recommend that the court find requester was not denied access to public records in violation of R.C. 149.43(B), and issue an order DENYING requester's claim for production of documents.

{¶29} *Pursuant to R.C. 2743.75(F)(2), either party may file a written objection with the clerk of the Court of Claims of Ohio within seven (7) business days after receiving this report and recommendation. Any objection shall be specific and state with particularity all grounds for the objection. A party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusions in this report and recommendation unless a timely objection was filed thereto. R.C. 2743.75(G)(1).*

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