

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State ex rel., Jean Keating

Court of Appeals No. L-08-1414

Relator

v.

Tom Skeldon and David Mann
and John Borell

DECISION AND JUDGMENT

Respondents

Decided: December 28, 2009

* * * * *

Kristi L. Haude, for relator.

Julia R. Bates, Lucas County Prosecuting Attorney, and
Karlene D. Henderson, Assistant Prosecuting Attorney, for respondents.

* * * * *

HANDWORK, P.J.

{¶ 1} This mandamus action is before the court on relator's notice of attorney fees incurred as a direct result of respondent's failure timely to produce certain records for her inspection.

{¶ 2} Initially, relator, Jean Keating, named three respondents, Tom Skeldon, David Mann, and John Borrell, in her petition for a writ of mandamus seeking public records related to the operation of the Lucas County Dog Warden's Office. *State ex rel., Jean Keating, Relator v. Tom Skeldon, et al., Respondents*, (April 23, 2009) 6 Dist.No. L-08-1414, 2009-Ohio-2052, ¶ 1. We, however, determined that Tom Skeldon, the Lucas County Dog Warden, was the only named individual responsible for the requested records. *Id.* at ¶ 17. We ordered him to provide relator the records that he had not timely provided for her inspection and/or copying at cost. These items were listed as Nos. 7, 16, and 17. *Id.*

{¶ 3} On September 18, 2008, Skeldon filed an affidavit in which he averred that he had, on April 24, 2008, made the listed records available for relator's inspection. Relator then filed her first motion for costs, statutory damages, and attorney fees. See *State ex rel., Jean Keating, Relator v. Tom Skeldon, Respondent* (Oct. 14, 2009) 6 Dist.No. L-08-1414. We found that relator was not entitled to statutory damages, but was entitled to court costs and any reasonable attorney fees. *Id.*

{¶ 4} Relator subsequently requested a total of \$13,195, or \$175 per hour, in attorney fees. *Id.* This amount included attorney fees allegedly arising from the failure of Mann and Borrell promptly to allow relator to inspect and/or make copies of the requested public records. *Id.* We, however, concluded that relator was entitled to only those attorney fees that were engendered as a direct result of the failure of Tom Skeldon,

in his capacity as the Lucas County Dog Warden, to "respond promptly to her records request and/or to produce said records for her inspection." *Id.* Consequently, we ordered relator to file a request for attorney fees related only to this failure, and an affidavit in support thereof, within 20 days of the date that our decision was file-stamped. *Id.* We granted respondent the right to file a memorandum in opposition within 20 days of the date that relator's request for attorney fees was file-stamped. *Id.*

{¶ 5} On November 3, 2009, relator filed a request for attorney fees in the amount of \$14,735. This amount again includes those incurred in the litigation against Mann and Borrell. In the alternative, relator asks this court to award her attorney fees in the amount of \$12,880 that she alleges arose as a direct result of Tom Skeldon's failure to timely failure to respond to her requests, plus the amount it cost to litigate her attorney fees. In opposition, Tom Skeldon filed a motion asking this court to deny both of relator's requests for attorney fees or, in the alternative, reduce that award to \$2,371.

{¶ 6} As noted *infra*, in our decision of April 23, 2009, we expressly held that David Mann and John Borrell were not responsible for the public records requested by relator. Therefore, pursuant to that prior order, we shall award relator only those *reasonable* attorney fees arising from Tom Skeldon's failure to timely respond to her public records request. See R.C. 149.43(C)(2)(b).

{¶ 7} Relator's attorney, Kristi L. Haude, charged Keating \$175 per hour. She charged this same amount for any ministerial duties, such as sending e-mails to relator

and scheduling depositions, which are not subject to the same fee. See *State ex rel. Doe, v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149 ¶ 41. In addition, Haude includes attorney fees incurred by filing various motions for depositions, further discovery and the like after the point when respondent provided the three public records that this court ordered to be produced in our April 23, 2009 decision. As a result, we conclude that the amount of attorney fees sought by relator from respondent is unreasonable.

{¶ 8} We have carefully reviewed all of the items on Haude's "Statement For Services Rendered," reduced or negated the amounts charged for ministerial duties, eliminated amounts charged to respondent that related to David Mann and John Borrell, and excluded those unnecessary attorney fees incurred after our April 23, 2009 decision. We, therefore, conclude that a reasonable amount of attorney fees that were generated by Skeldon's failure timely to produce the public records requested by relator is \$6,300. This figure takes into account the public benefit conferred by relator in informing the public, as well as the Ohio House of Representatives, of the manner in which respondent was operating the Lucas County Dog Warden's Office. Relator is also awarded the costs¹ of this original action.

FEES AWARDED.

¹An award of costs does not include any litigation expenses. See *State ex rel. Doe v. Smith*, *supra*, ¶ 45.

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Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.