[Cite as *State ex rel. Cranford v. Cleveland,* 2004-Ohio-633.]

COURT OF APPEALS OF OHIO EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83534

STATE OF OHIO EX REL. EUGENE CRANFORD, JR.	:	
Relator	:	JOURNAL ENTRY
	:	and
vs.	:	OPINION
CITY OF CLEVELAND, ET AL.	:	
Respondents	:	

CHARACTER OF PROCEEDING: WRIT OF MANDAMUS
Motion No. 356965

JUDGMENT: WRIT DENIED

DATE OF JOURNALIZATION: February 6, 2004

APPEARANCES:

For Relator: CAROLINE WATSON
2111 S. Green Road, Suite 1A
South Euclid, Ohio 44121

For Respondents: SUBODH CHANDRA, Director of Law
JOSE M. GONZALEZ, Assistant Director

601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114

COLLEEN CONWAY COONEY, J.

{¶1} On September 30, 2003, relator, Eugene Cranford, sought a writ of mandamus against the City of Cleveland, Subodh Chandra, and Chris Ronayne ("respondents"). Respondents filed an answer and a motion for summary judgment. Relator filed his brief in opposition to the motion for summary judgment, and respondents filed a reply. For the following reasons, we grant the respondent's motion for summary judgment and deny the relator's request for attorney fees.

{¶2} In his petition, relator states that on August 25, 2003 he was terminated from his position as the Secretary of the Board of Zoning Appeals and Building Standards and Appeals with the City of Cleveland. The termination letter informed him that he had ten days to file an appeal with the Civil Service Commission. Relator appealed his termination and on August 29, 2003, made a written request pursuant to the Ohio Public Records Act for a copy of his personnel files and the complete file regarding his termination.

{¶3} Not receiving the requested records, relator's attorney contacted the City of Cleveland approximately six times in a two-week period and was told that the responsible persons were out of the office and that they were waiting on Chris Ronayne and the Planning Commission to review the requested documents. Relator claims the last contact was on September 23, 2003 when he was told that the City was still waiting for some documents and that some were being reviewed.

{¶4} In his petition, the relator requests that this court order the City of Cleveland to produce the following records: Any and all documents relating to an investigation performed by the City of Cleveland regarding a charge of misconduct against Eugene

Cranford, former Secretary to the Board of Zoning Appeals and Building Standards and Appeals, City Planning Commission. This should include, but is not limited to, all reports, recommendations, e-mails, memoranda, notes, letters, correspondence, and any other records relating to this matter and the complete Civil Service, divisional, departmental and/or personnel files for Eugene Cranford, Jr. Relator also requests that this court award him attorney fees and costs.

{¶5} Respondents argue that the requested records were provided to relator and, therefore, the action is moot. Relator claims, however, that respondent did not fully comply with the request. In his request, relator asked for any and all documents including notes taken regarding his dismissal hearing. Relator states that during the hearing, respondent Chris Ronayne read from a notebook containing notes he made during relator's pre-disciplinary hearing. Respondents maintain that personal notes are not public records and, therefore, they were under no duty to provide the notes. We agree.

{¶6} In order for this court to issue a writ of mandamus, a relator must establish that: 1) the relator possesses a clear legal right to the relief prayed; 2) the respondent possesses a clear legal duty to perform the requested act; and 3) the relator possesses no plain and adequate remedy in the ordinary course of the law. *State ex rel. Manson v. Morris* (1993), 66 Ohio St. 3d 440, 613 N.E.2d 232, citing *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28, 451 N.E.2d 225.

{¶7} In *State ex rel. Murray v. Netting* (Sept. 18, 1998), Guernsey App. No. 97-CA-24, the relator sought several documents concerning the hiring of a police chief, including the handwritten notes taken during the interview process which were contained in the agency's files. In determining that the notes were not public records, the court stated, "* *

* handwritten notes made by a Judge during trial are personal papers kept for his convenience, and not official records. We see no reason to distinguish between a Judge's handwritten notes and the handwritten notes in the instant case. The notes were personal papers of the interviewers, used to complete the evaluation forms, to which relator is entitled. The mere fact that some of these notes happened to end up in the custody of respondent does not render them public records."

{¶8} Likewise, this court also finds that the requested records were not public records but rather the personal notes of the respondent. "R.C. 149.43(A)(1) defines public record as a record that is kept by any public office; it does not define a public record as any piece of paper on which a public officer writes something." *State ex rel. Steffen v. Kraft* (1990), 67 Ohio St.3d 439, 440, 619 N.E.2d 688, cert. denied, 512 U.S. 1246, 114 S.Ct. 2769, 129 L.Ed.2d 882. Additionally, relator has not asserted that other members of respondent's office either used, had access to, or had custody of the respondent's notes. Because we find that the notes are not public records, the respondents did not possess a duty to comply with relator's request to provide these documents. Therefore, because respondents have fully complied with the request, this matter is moot.

{¶9} Relator also seeks attorney fees in the instant case. "Awarding attorney fees in public records cases is discretionary and is to be determined by the presence of a public benefit conferred by relator seeking the disclosure. Moreover, since the award is punitive, reasonableness and good faith of the respondent in refusing to make disclosure may also be considered." *State ex rel. Beacon Journal Publishing Co. v. Maurer* (2001), 91 Ohio St.3d 54, 57, 741 N.E.2d 511, quoting *State ex rel. Multimedia, Inc. v. Whalen* (1990), 51 Ohio St.3d 99, 100, 554 N.E.2d 1321, 1322.

{¶10} First, we note that relator failed to demonstrate the public benefit in awarding attorney fees in this matter. Secondly, we do not find that respondents acted in bad faith. While the records were not promptly provided to relator, the record indicates that the request was processed quickly but was delayed by the vacation of the employee responsible for compiling the records for release. We further note that relator received the requested records soon after the employee returned from vacation.

{¶11} Accordingly, we grant the respondents' motion for summary judgment and deny the writ of mandamus. Relator's request for attorney fees is also denied. Relator to bear costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

{¶12} The writ is denied.

Writ denied.

JAMES J. SWEENEY, P.J., and ANTHONY O. CALABRESE, JR., J., concur.