

[Cite as *State ex rel. Patituce & Assocs., L.L.C. v. Cleveland*, 2017-Ohio-300.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104837

**STATE OF OHIO, EX REL.
PATITUCE & ASSOCIATES, L.L.C.**

RELATOR

vs.

THE CITY OF CLEVELAND, OHIO

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 501051
Order No. 503227

RELEASE DATE: January 20, 2017

ATTORNEY FOR RELATOR

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LARRY A. JONES, SR., P.J.:

{¶1} Relator Patituce & Associates L.L.C. (the “Law Firm”) filed a complaint for writ of mandamus against respondent the city of Cleveland (the “City”) regarding the Law Firm’s public records requests made on June 6, 2016 and June 16, 2016. After all of the requested records had been produced, the Law Firm filed an amended complaint seeking an award of court costs and statutory damages against the City. The Law Firm has filed a motion for summary judgment, which the City has opposed.

{¶2} In its June 6, 2016 records request the Law Firm sought the production of policies, manuals, and regulations relating to police body cams and videos in the City’s possession. The second records request was sent on June 16, 2016, and sought the production of policies regarding search warrants, a list of officers in the Gang Impact Unit, personnel files, training certifications, disciplinary reports, continuing education classes for nine specific police department employees and officers in the Gang Impact Unit. The City assigned each public record request tracking numbers and advised the Law Firm on

July 6, 2016, that it would produce records as they were compiled and received by the City. Thereafter, the Law Firm sought updates from the City on the status of its records requests on July 15, 2016, July 28, 2016, August 4, 2016, and August 5, 2016. On August 12, 2016, the Law Firm filed the mandamus action. On August 30, 2016, the City produced documents in response to the second request and produced the remaining documents on September 14, 2016.

{¶3} Mandamus is the proper remedy to compel compliance with Ohio’s Public Records Act. *State ex rel. Cincinnati Enquirer v. Deters*, Slip Opinion No. 2016-Ohio-8195, ¶ 18. The relator must establish entitlement to the requested extraordinary relief by clear and convincing evidence. *Id.* at ¶ 19.

{¶4} The City’s production of the requested records rendered the Law Firm’s mandamus claim moot. *Id.* at ¶ 21, citing *State ex rel. Cranford v. Cleveland*, 103 Ohio St.3d 196, 2004-Ohio-4884, 814 N.E.2d 1218, ¶ 23. Therefore, the sole issue before the court is whether the City’s production of the records was timely. “Statutory damages may be awarded if the public record has not been provided promptly.” *Id.* at ¶ 22, citing R.C. 149.43(C)(1).

{¶5} In *Deters*, the Ohio Supreme Court noted that there is no deadline by which a public office must respond to a request for public records. *Id.* at ¶ 23. The “determination of what is ‘reasonable’ depends upon all the pertinent facts and circumstances.” *Id.* Also, R.C. 149.43(A) allows for the public office to make appropriate redactions of exempt materials prior to disclosure. *Id.*

{¶6} The Law Firm contends that the City did not respond within a reasonable time because the records were not produced until after the mandamus action was filed and because the City did not respond to several of the Law Firm’s requests for status updates.

{¶7} The City maintains that it did respond within a reasonable time based on the voluminous nature of the requests. The Law Firm does not dispute that there were voluminous documents requested but questions the need for the City to review or analyze

them. We find the law would require the City to review and analyze the requested records.

{¶8} In *State ex rel. Strothers v. Rish*, 8th Dist. Cuyahoga No. 81862, 2003-Ohio-2955, this court held that documents contained in personnel files may contain information that is exempted from disclosure, such as any records prohibited from disclosure by federal or state law, including R.C. 3309.22(A). *Id.* at ¶ 25-26. The Ohio Supreme Court has recognized that not all items in a personnel file may be considered public records. *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 385, 481 N.E.2d 632 (1985). A “public record” is “any record that is kept by any public office * * *.” R.C. 149.43(A)(1). However, a “record” is something that is “created or received by or coming under the jurisdiction of any public office * * * which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” R.C. 149.011(G). To 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. To the extent that an item is not a public record and is “personal information,” as defined in R.C. 1347.01(E), a public office “would be under an affirmative duty, pursuant to R.C. 1347.05(G), to prevent its disclosure.” *Id.*

{¶9} In addition, the Ohio Supreme Court has held that

[p]olice officers’ files that contain the names of the officers’ children, spouses, parents, home addresses, telephone numbers, beneficiaries, medical information, and the like should not be available to a defendant who might use the information to achieve nefarious ends. This information

should be protected not only by the constitutional right of privacy, but, also, we are persuaded that there must be a ‘good sense’ rule when such information about a law enforcement officer is sought by a defendant in a criminal case.

State ex rel. Keller v. Cox, 85 Ohio St.3d 279, 281, 707 N.E.2d 931 (1999); *see also* R.C. 149.43(A)(1)(p).

{¶10} Because the Law Firm requested personnel files of police officers and the requested records may contain information prohibited from disclosure, the City had to review the documents before providing them. Further, the City did advise the Law Firm on July 6, 2016, that records would be produced as they were compiled and received. The City never refused to produce any of the requested records. Although the City did not reiterate its July 6th promise in response to the Law Firm’s successive requests for status updates, the City did, in fact, produce all of the records that were requested. Accordingly, we find that the City did provide the records within a reasonable time and that they did provide prompt responses to the Law Firm when it sent confirmations of the records requests and indicated that the records would be produced. For these reasons, this case is distinguishable from *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 367, 2014-Ohio-538, 7 N.E.3d 1136, ¶ 21-22, where the city of South Euclid did not respond *in any way* to a public records request for a two-month period.

{¶11} For the foregoing reasons, the Law Firm’s motion for summary judgment seeking an award of statutory damages and the amended complaint for writ of mandamus in that regard is denied. The City to pay costs.

{¶12} The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶13} Writ denied.

LARRY A. JONES, SR., PRESIDING JUDGE _____

EILEEN A. GALLAGHER, J., and
PATRICIA ANN BLACKMON, J., CONCUR