

Case No. 2014-1141

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.*
OHIO REPUBLICAN PARTY,

Relator,

v.

EDWARD FITZGERALD, County Executive, County of Cuyahoga,

and

COUNTY OF CUYAHOGA and KOULA CELEBREZZE,

Respondents.

RELATOR'S MERIT BRIEF

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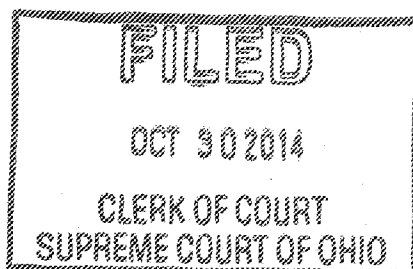
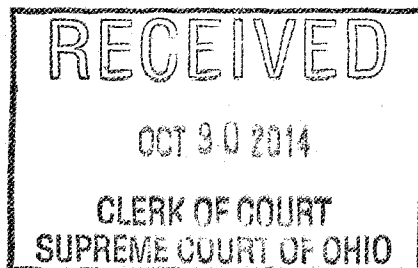


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I. INTRODUCTION

This original action for the issuance of a writ of mandamus arises from the willingness of persons responsible for public records in Cuyahoga County to provide public records documenting the key-card swipe data for several employees or officials with Cuyahoga County save one, *viz.*, Cuyahoga County Executive Edward FitzGerald. (See Verified Complaint ¶¶28&29.) Specifically, Relator has sought to obtain copies of the key-card swipe data that shows when County Executive FitzGerald enters and/or leaves county buildings or parking facilities. Yet, while Respondents have provided such records relating to several other officials with Cuyahoga County, they have refused to provide such records only with respect to County Executive FitzGerald. Previously, the same or similar records had also been sought by or on behalf of *The Cleveland Plain Dealer*, a newspaper of general circulation in the greater-Cuyahoga County area. (See Verified Complaint ¶¶12-14.) Thus, despite now having two requests for such public records, Respondents have failed to comply (and continue to refuse to comply) with their legal obligations to promptly provide copies of the requested public records relating to County Executive FitzGerald.

II. STATEMENT OF FACTS

Recognizing that public records would allow one to analyze, *inter alia*, how County Executive FitzGerald has balanced the demands between his taxpayer-financed job and his political campaign efforts, Chris Schrimpf, the communications director for Relator Ohio Republican Party, tendered on May 22, 2014, a public records request seeking the key-card swipe data relative to certain officials of the County of Cuyahoga. (Verified Complaint ¶¶17-18 & Exh.B.) In a subsequent e-mail dated June 2, 2014, to Emily Lundgard, the Director of

Communications for the County of Cuyahoga, Mr. Schrimpf referenced his earlier e-mail request and then re-requested the public records at issue in this case:

Looking for the key card swipe data for County Executive FitzGerald. I am seeking to obtain the information that you previously denied the Cleveland Plain Dealer.

(Verified Complaint ¶¶19-20 & Exh. C.) And to ensure clarity to his request, Mr. Schrimpf transmitted a third e-mail on June 9, 2014, to the recipients of his earlier e-mail wherein he stated:

[Previously], I submitted a public records request seeking the key card swipe data for County Executive FitzGerald.... Within that earlier request, I indicated that it was being tendered via the Cuyahoga County Public Records Ordinance. So as to ensure there is no confusion with respect to either request, I am writing to clarify that both requests (that of May 22 and of June 2) were submitted not only based upon the Cuyahoga County Public Records Ordinance (Chapter 106 of the Cuyahoga County Code), but also pursuant to Section 12.06 of the Cuyahoga County Charter (“[r]ecords of the County shall be open to the public as provided by general law”) and pursuant to the Ohio Public Records Act (R.C. 149.43).

As this clarification should not have affected the ability or legal obligation of Cuyahoga County and its officials to produce the requested records, I would appreciate it if you would advise as to when I might reasonably expect a response. As I noted in my e-mail to you of June 2, this request seeks the same records which Cuyahoga County has already refused to provide *The Cleveland Plain Dealer*. Thus, while it might have taken two months before the County responded to the *Plain Dealer*’s request, as the request of June 2 seeks the same records, the question is simply whether Cuyahoga County is going to stand steadfast and continue its refusal to produce responsive public records or whether it now recognizes and appreciates its legal obligations to make all responsive records available to the public.

(Verified Complaint ¶¶21-22 & Exh.D.)

While awaiting a response for the foregoing public records request, Mr. Schrimpf tendered a separate public records request on June 11, 2014, wherein he sought the key-card swipe data for the various members of the county council for Cuyahoga County. (Verified Complaint ¶¶28 & 29, and Exh. E.) In sharp contrast to the lack of any response for such data

concerning County Executive FitzGerald (or the subsequent refusal to provide such data), when it came to the key-card data for members of the county council, Cuyahoga County promptly produced those records in less than a single day. (Verified Complaint ¶30 and Exh. E.)

When Respondents failed for nearly seven week to either produce the key-card swipe data for County Executive FitzGerald or to formally deny the request, Relator commenced this mandamus action on July 9, 2014. Only after the filing of this action did Respondents finally respond to the request for County Executive FitzGerald's key-card swipe data. Notwithstanding the production of key-card swipe data for other public officials of Cuyahoga County, Respondents have claimed that such data for County Executive FitzGerald is exempt from disclosure pursuant to R.C. § 149.433. (See Respondents' Motion to Dismiss, at 10-11 ("on July 11, 2014, two days after the Complaint was filed, [Cuyahoga County Law] Director Makhoulouf responded to Schrimpf providing key card swipe data for Mr. Kelly, Mr. Benders, Ms. Byrd, Ms. Rocco and Ms. Cole, and advised that key card swipe data for Mr. FitzGerald would not be released pursuant to Ohio Rev. Code § 149.433").

III. LAW AND ARGUMENT

The issue before this Court is whether key-card swipe data for parking facilities and county buildings for Cuyahoga County Executive FitzGerald are exempt from disclosure under the Public Records Act, R.C. § 149.43, pursuant to the exemption provided in R.C. § 149.433 for "security records" and "infrastructure records". As developed below, Respondents invocation of this exemption lacks a basis both in law and in fact. Accordingly, this Court should reject Respondents' claim that R.C. § 149.433 is applicable to key-card swipe data for County Executive FitzGerald and, instead, issue the requested writ of mandamus directing the release of those records.

Proposition of Law No. 1

The burden of proof is upon the public office to establish, with proper evidence, that an exemption under the Public Records Act is clearly applicable to justify withholding otherwise public records.

As the Respondents herein are refusing to produce responsive public records due to an assertion that such records are exempt from disclosure under the Public Records Act, the burden of proving with evidence the application of such an exemption is upon the Respondents. *State ex rel. Gannett Satellite Info. Network, Inc. v. Petro*, 80 Ohio St.3d 261, 266, 685 N.E.2d 1223 (1997)(“the custodian [of a responsive public record] has the burden to establish an exemption” under the Public Records Act). In assessing whether Respondents have sufficiently satisfied their burden of proving the application of an exception, this Court must be mindful and appreciative that “[e]xemptions to disclosure must be strictly construed against the custodian of public records.” *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 376-377, 662 N.E.2d 334 (1996). Additionally, “all doubt should be resolved in favor of disclosure.” *State ex rel. Ware v. City of Cleveland*, 55 Ohio App.3d 75, 76, 562 N.E.2d 946 (1989). Thus, unless the Respondents have clearly proven that the records at issue “fall squarely” within the claimed exception, they have not met their burden of proof and a writ of mandamus should issue. *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 886 N.E.2d 206 2008-Ohio-1770 ¶10 (2008)(“[a] custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception”).

Proposition of Law No. 2

In order for a record to be a “security record” under R.C. § 149.433(A)(3)(a) such that it is exempt from disclosure under the Public Records Act, the following requirements must be proven: (i) the record at issue must “contain information”; (ii) that information must be “directly used” (not incidentally used); (iii) the direct use of such information must for “protecting or maintaining the security of a public office”; and (iv) the security of the public office is being protected or maintained against “attack, interference, or sabotage”.

Respondents have claimed that the key-card swipe records relating to County Executive FitzGerald (but, apparently not to any other employee or official with Cuyahoga County) is a “security record” exempt from disclosure pursuant to R.C. § 149.433(B)(“[a] record kept by a public office that is a security record ... is not a public record under section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section”). In taking such a position, the Respondents have repeatedly invoked this Court’s recent decision in *State ex rel. Plunderbund Media v. Born*, ___ Ohio St. 3d ___, ___ N.E.2d ___, 2014-Ohio-3679 (2014), though doing so in a rote manner without any substantive explanation concerning the actual application of *Plunderbund*. And in so doing, Respondents have ignored the express admonition of this Court:

[not] all records involving criminal activity in or near a public building or concerning a public office or official are automatically “security records.” The department and other agencies of state government cannot simply label a criminal or safety record a “security record” and preclude it from release under the public-records law, without showing that it falls within the definition in R.C. 149.433.

Id. ¶29. But that is exactly what Respondents are doing herein with respect to the key-card swipe data for County Executive FitzGerald – simply labelling, through nothing more than *ipse dixit*, that such data are “security record” and, thus, denying the release of that data.¹

¹ Even though “[not] all records involving criminal activity ... concerning a public office ... are automatically ‘security records’”, Respondents have taken the opposite position. In the Notice of Deposition of Sheriff Bova (filed herein on September 30, 2014), the Notice of Deposition of Deputy Soprak (attached to Respondents’ Motion for Second Protective Order,

However, Respondents fail to appreciate that “security records” was expressly defined by the General Assembly when it enacted R.C. 149.433. And “[w]here a statute defines terms used therein, such definition controls in the application of the statute.” *Good Samaritan Hospital of Dayton v. Porterfield*, 29 Ohio St.2d 25, 30, 278 N.E.2d 26 (1972); accord *Terteling Bros. v. Glander*, 151 Ohio St. 236, 85 N.E.2d 379 (1949)(syllabus ¶1)(“[w]here a statute defines terms used therein which are applicable to the subject matter affected by the legislation, such definition controls in the application of the statute”); see *Galvin v. Masonic Toledo Trust*, 34 Ohio St.2d 157, 296 N.E.2d 542 (1973)(syllabus ¶1)(“[w]here the General Assembly defines a provision in a tax exemption statute, prior inconsistent decisions of the courts must yield to the statutory definition”).

filed herein on October 20, 2014, as Exhibit 5), pursuant to subpoena (attached as Exhibit 3 to Respondents’ Motion for Second Protective Order) and in a separate public records request (attached as Exhibit 1 to Respondents’ Motion for Second Protective Order), Relator sought the production of police offense-and-incident reports concerning any threats allegedly made against County Executive FitzGerald.

Repeatedly, in direct repudiation of the well-established precedent of this Court that such reports are public records, Respondents have refused to provide any offense-and-incident reports, claiming that those reports are also “security records”. Cf., e.g., *Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83 (1994)(syllabus ¶5)(“[r]outine offense and incident reports are subject to immediate release upon request”); *State ex rel. Rasul-Bey v. Onunwor*, 94 Ohio St.3d 119, 122, 760 N.E.2d 421 (2002)(“we grant a peremptory writ to compel the mayor to provide access to the requested police incident report”); *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 861 N.E.2d 530, 2007-Ohio-609 ¶13 (2007)(“[r]outine offense-and-incident reports are not exempt work product and are normally subject to immediate release upon request”); *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St.3d 54, 56, 741 N.E.2d 511, 2001-Ohio-282 (2001) (“incident reports initiate criminal investigations but are not part of the investigation”); *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 662 N.E.2d 334 (1996)(“[o]nce clothed with the public records cloak, the records cannot be defrocked of their status”).

Furthermore, such offense-and-incidents reports are even not comparable to or the same as the records which were at issue in *Plunderbund* which concerned itself with “investigative reports of threats to the governor.” *Plunderbund*, 2014-Ohio-3679 ¶23. In contrast, this Court has expressly declared and recognized that “incident reports initiate criminal investigations but are not part of the investigation.” *Maurer*, 91 Ohio St.3d at 57. Thus, *Plunderbund* provided no justification for the refusal of Respondents or the Sheriff’s Office to produce the requested offense-and-incident reports.

Thus, the starting and end point as to what constitutes a “security record” is the statutory definition itself, for “it is not the province of the judiciary to expand a statutory definition created by the General Assembly.” *In re Mullen*, 129 Ohio St.3d 417, 953 N.E.2d 302, 2011-Ohio-3361 ¶32 (2011)(O’Connor, C.J., dissenting). R.C. § 149.433(A)(3) specifically defines “security record” to mean:

(a) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;

(b) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism, including any of the following:

(i) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel;

(ii) Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies;

(iii) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.

(c) An emergency management plan adopted pursuant to section 3313.536 of the Revised Code.

In claiming that the key-card swipe data constitutes a “security record”, Respondents have broadly invoked the exemption in R.C. § 149.433 without any indication of which division is applicable. Instead, Respondents have simply declared “that key card swipe data for Mr. FitzGerald would not be released pursuant to Ohio Rev. Code § 149.433 in light of the fact that the Sheriff’s Department had confirmed the existence of verifiable security threats.” (*See*

Respondents' Motion to Dismiss, at 11.) At best, it appears that Respondents are attempting to claim the key-card swipe data for County Executive FitzGerald (but no other county employee or official) is a "security record" as defined in R.C. § 149.433(A)(3)(a): "[a]ny record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage."

Considering the plain language of the statutory definition of "security record" as contained in R.C. § 149.433(A)(3)(a), the following requirements must be proven in order for that exemption to be applicable: (i) the record at issue must "contain information"; (ii) that information must be "directly used" (not incidentally used); (iii) the direct use of such information must be for "protecting or maintaining the security of a public office"; and (iv) the security of the public office is being protected or maintained against "attack, interference, or sabotage."

While the key-card swipe data for County Executive FitzGerald clearly "contains information", Respondents have offered no evidence that such information is even being used (let alone "directly used") in order to "protect or maintain the security" of the County Executive against "attack, interference, or sabotage." Instead, the sole focus of Respondents' rationale is that someone else may utilize the key-card swipe data and that such use may diminish the effectiveness of the effort to provide security for County Executive FitzGerald. (*See* Soprak Affidavit ¶12.) But the potential use (or misuse) of information by a third party is not even one of the statutory criteria by which a record is exempted as a "security record" under R.C. § 149.433(A)(3)(a). *See also State ex rel. Bell v. City of London*, 2011-Ohio-3914 ¶51 (12th Dist. 2011)("a public records request cannot be denied merely on the basis that the requester intended to use the records for 'a bad purpose'").

Instead, the criteria by which a record is exempt from disclosure as a “security record” under R.C. § 149.433(A)(3)(a) focuses exclusively upon the use (and, specifically, direct use) of information therein by the government. And with respect to the key-card data that shows when County Executive FitzGerald enters and/or leaves a county building or parking facilities, the Respondents have failed to offer any evidence establishing that such information is “directly used” to “protect or maintain the security of a public office”; and (iv) the security of the public office is being protected or maintained against “attack, interference, or sabotage.”² Having failed to offer any evidence establishing how the key-card data is “directly used” by Cuyahoga County, the Respondents to “protect or maintain the security” of County Executive FitzGerald against “attack, interference, or sabotage”, the Respondents have not and cannot satisfy their evidentiary burden of demonstrating the application of an exemption. For “[e]xceptions 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, 886 N.E.2d 206, 2008-Ohio-1770 (2008)(syllabus ¶2).

Proposition of Law No. 3

In order for a record to be an “infrastructure record” under R.C. § 149.433(A)(2) such that it is exempt from disclosure under the Public Records Act, the following requirements must be proven: (i) the record at issue must actually “disclose”; (ii) the “configuration”; (iii) of a public office’s “critical systems”.

Alternatively, Respondents have claimed that the key-card swipe records relating to County Executive FitzGerald (but, apparently not to any other employee or official with

² Noteworthy, the Affidavit of Deputy Soprak makes no mention of if, when and under what circumstances the key-card swipe data for Cuyahoga County Executive FitzGerald has even been viewed (let alone directly used) by the Personal Protection Unit of the Cuyahoga Sheriff’s Office.

Cuyahoga County) is also an “infrastructure record” exempt from disclosure pursuant to R.C. § 149.433(B)(“[a] record kept by a public office that is ... an infrastructure record is not a public record under section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section”). In turn, R.C. § 149.433(A)(2) specifically defines “infrastructure record” to mean:

any record that discloses the configuration of a public office’s ... critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of the building in which a public office ... is located. “Infrastructure record” does not mean a simple floor plan that discloses only the spatial relationship of components of a public office ... or the building in which a public office or chartered nonpublic school is located.

Thus, pursuant to the explicit terms of the statutory definition, an “infrastructure record” must actually “disclose” the “configuration” of a public office’s “critical systems”.

The Merriam-Webster’s Dictionary defines “configuration” as the “relative arrangement of parts or elements: as ... functional arrangement <a small business computer system in its simplest *configuration*>.” <http://www.merriam-webster.com/dictionary/configuration>. And, thus, it is the disclosure of the functional arrangement of various individual parts of a critical system, not the data relating to the operation of the system, which falls within the statutory definition of “infrastructure record”. Respondents confuse the difference between a system’s configuration versus datum produced by such a system. For example, while a record that discloses the functional arrangement of the various parts of a public office’s electrical or water systems would fall within the definition of “infrastructure record”, the statutory definition does not go so far as to protect from disclosure information about the operation of such systems, *e.g.*, electrical or water bills, data on the amount of water produced, *etc.*

Additionally, Respondents have already released key-card swipe data relating to other public officials of Cuyahoga County. While the public records request at issue herein relating to County Executive FitzGerald's key-swipe data was pending, Chris Schrimpf, on behalf of the Relator and on June 10, 2014, requested the swipe key-card data relative to the various members of the county council of Cuyahoga County. (Verified Complaint ¶30 & Exh. E.) In less than one day, Cuyahoga County provided the key-card swipe data relative to these public officials for their access to the council chamber building and parking facilities. (*Id.*) Clearly, Respondents' self-serving claim that key-card swipe data somehow constitutes "infrastructure records" clearly lacks merit when they willingly provide such data for other county officials.³

And finally, because "in mandamus actions, a court is not limited to considering facts and circumstances at the time a proceeding is instituted but should consider the facts and conditions at the time it determines whether to issue a peremptory writ," *State ex rel. Portage Lakes Ed. Ass'n, OEA/NEA v. State Emp. Relations Bd.*, 95 Ohio St.3d 533, 769 N.E.2d 853, 2002-Ohio-2839 ¶54 (2002), this Court should also consider that the offices of the Cuyahoga County Executive moved on or about July 30, 2014, from Courthouse Square, 310 Lakeside Avenue to the new Cuyahoga County Administrative Headquarters at 2079 East 9th Street. (*See* Motion to

³ In his affidavit, Deputy Soprek characterizes the responsibilities of the Principal Protection Unit of the Cuyahoga County Sheriff's Office as including the protection of public officials in Cuyahoga County, including members of the county council. (Soprek Affidavit ¶7.) He then posits that "in the realm of protecting public officials, it is critical to protect the manner and pattern of travel, ingress and egress, and timing. This is precisely the kind of information that the County's security key-card data reveals" and that release of such data "diminishes the effectiveness of the Principal Protection Unit and its ability to protect the County Executive." (Soprek Affidavit ¶12.) But, apparently, release of the same data for members of the county council – who, by Deputy Soprek's own admission, is within the bailiwick the Principal Protection Unit – can freely be released. This dichotomy and inconsistency in how Cuyahoga County dealt with requests for key-card swipe data for members of county council versus the county executive only confirms that the withholding of such data for County Executive FitzGerald is baseless (or, at a minimum, should have been developed through discovery).

Take Judicial Notice.⁴) As, Relator's public records request was tendered prior to July 30, 2014, the key-card data at issue herein relate to a county building or parking facilities that are no longer utilized by County Executive FitzGerald. Thus, even if, *arguendo*, the key-card swipe data somehow constitute "infrastructure records", when the offices of the county executive physically moved to a different location, the old location, *i.e.*, 310 Lakeside Avenue, such location no longer constituted the public office of the county executive and, thus, the key-card swipe data would no longer be "infrastructure records".⁵

CONCLUSION

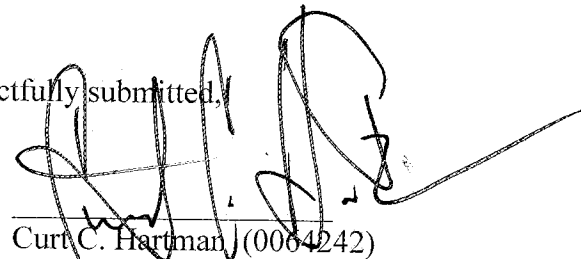
It is well-established that when a public office or person responsible for public records refuses to release such records based upon the claim that such records are exempt from disclosure, the burden of proving the application of the claimed exemption is upon such public office or person responsible. With respect to the key-card swipe data concerning County Executive FitzGerald (and not any other county employees or officials), the Respondents have

⁴ A request to counsel for Respondents for an agreed statement of facts regarding the physical change of offices for County Executive FitzGerald was met with silence. And, even though S.Ct.Prac.R. 12.06 expressly provides for the submission of evidence via depositions, because this Court granted Respondents' requests for protective orders so as to deny Relator the opportunity to obtain such basic discovery consistent with the civil rules (which, according to S.Ct.Prac.R. 12.01(A)(2)(b) as supposed to be applicable in original actions), Relator was unable to develop testimonial evidence concerning, *inter alia*, the physical change of the offices of County Executive FitzGerald and how such change relates to the key-card he utilizes; instead, Relator was relegated to presenting such evidence via a request for judicial notice and otherwise foregoing the ability to otherwise develop a full and complete record for this Court on all issues implicated herein.

⁵ In *Plunderbund*, this Court concluded that, based upon "a reasonable reading of R.C. 149.433(A)(3)(a)," the use of the phrase "public office" in that division included public officials *qua* an individual and not just physical facilities. *Plunderbund*, 2014-Ohio-3679 ¶¶19-21. In contrast, though, because "infrastructure record" specifically relates to critical systems and then lists several examples thereof (all of which relate to aspects of physical facilities, not individuals), a reasonable reading of R.C. § 149.433(A)(2) would have the phrase "the configuration of a public office's ... critical systems" being concerned only with physical facilities.

not established, both as a legal principle and based upon the evidence, that such records do in fact constitute "security records" or "infrastructure records" as explicitly defined by the General Assembly in R.C. § 149.433. Accordingly, this Court should reject Respondents' claim that R.C. § 149.433 is applicable to key-card swipe data for County Executive FitzGerald and, instead, issue the requested writ of mandamus directing the release of those records.

Respectfully submitted,



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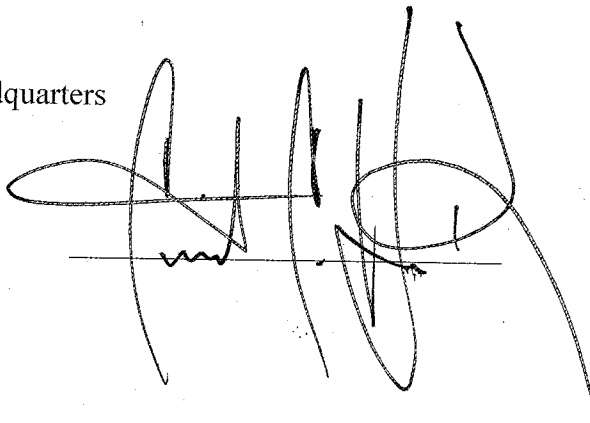
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served upon the following via regular mail on the 29th day of October 2014:

Majeed G. Makhoulf
Robin M. Wilson
Cuyahoga County Department of Law
Cuyahoga County Administrative Headquarters
2079 East Ninth Street, 7th Floor
Cleveland, Ohio 44115

A handwritten signature in black ink, appearing to be "Robin M. Wilson", written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke.

APPENDIX

149.433 Exempting security and infrastructure records.

(A) As used in this section:

(1) "Act of terrorism" has the same meaning as in section 2909.21 of the Revised Code.

(2) "Infrastructure record" means any record that discloses the configuration of a public office's or chartered nonpublic school's critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of the building in which a public office or chartered nonpublic school is located. "Infrastructure record" does not mean a simple floor plan that discloses only the spatial relationship of components of a public office or chartered nonpublic school or the building in which a public office or chartered nonpublic school is located.

(3) "Security record" means any of the following:

(a) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;

(b) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism, including any of the following:

(i) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel;

(ii) Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies;

(iii) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.

(c) An emergency management plan adopted pursuant to section 3313.536 of the Revised Code.

(B) A record kept by a public office that is a security record or an infrastructure record is not a public record under section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section.

(C) Notwithstanding any other section of the Revised Code, disclosure by a public office, public employee, chartered nonpublic school, or chartered nonpublic school employee of a security record or infrastructure record that is necessary for construction, renovation, or remodeling work on any public building or project or chartered nonpublic school does not constitute public disclosure for purposes of waiving division (B) of this section and does not result in that record becoming a public record for purposes of section 149.43 of the Revised Code.

Amended by 130th General Assembly File No. TBD, HB 487, §1, eff. 9/17/2014.

Effective Date: 05-15-2002; 09-28-2006