

Case No. 2021-1387

In the
Supreme Court of Ohio

STATE EX REL. OFFICER KEITH POOL,

Relator,

v.

CITY OF SHEFFIELD LAKE

and

MAYOR DENNIS BRING,

Respondents.

Original Action in Mandamus

RELATOR'S MERIT BRIEF

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INTRODUCTION

Relator Officer Keith Pool requested the records that are at issue in this case weeks after leaked surveillance video went viral last summer. The video—captured in the booking area of Respondent City of Sheffield Lake’s police station—showed then-police chief Anthony Campo making a “KU KLUX KLAN” sign and using it to cover the “POLICE” insignia on Officer Pool’s raincoat, which he had left in the booking area while he changed into his uniform to start his shift. The chief then made a Ku Klux Klan hat out of paper and told Officer Pool to wear it during his next call.

This was not the first act of racist bigotry to which Officer Pool was subjected during his employment with the City. He, and several of his co-workers, had been targeted by the chief previously for harassment and mockery based on race, religion, sex, and sexual orientation. Among the records sought in his July 30, 2021 public-records request to his employer and its mayor (who supervised the chief as the City’s Safety Director), were the images Mr. Campo created, shared, and posted on the police bulletin board singling out employees for abuse on the basis of protected classifications.

Records of this harassment—which Mr. Campo freely and openly engaged in while on City time, on City property, and using City resources—document the activities of the Division of Police. But Respondents have failed to comply with Officer Pool’s July 30, 2021 public-records request. The Court should grant the writ.

STATEMENT OF FACTS

I. Relator Keith Pool is a police officer with the Sheffield Lake Division of Police.

Relator Keith Pool is a resident of the Respondent City of Sheffield Lake and has been employed as a patrol officer with the City's Division of Police since September 9, 2020. Joint Statement Uncontested Facts, ¶¶ 1–2 ("JSUF"); Relator's Notice of Submission of Evidence ("RNSE"), Ex. 1 (Ex. 1 to Petition), Aff. of K. Pool, ¶ 4. Officer Pool is proud to dedicate his life to serving the public and his community. RNSE, Ex. 1 (Ex. 1 to Petition), ¶ 4.

In the City of Sheffield Lake, the Division of Police exists as one component of the Department of Public Safety. City of Sheffield Lake Charter, Art. V, § 4; City of Sheffield Lake Cod. Ord., Ch. 133.01. The Chief of Police is the "Chief Administrative Officer" of the Division "and the final departmental authority in all matters of policy, operations, and discipline." RNSE, Ex. 2-D, Sheffield Lake Police Dept. Manual, No. 200.¹ The Chief is further responsible for "controlling and staffing all activities" of the Division and "for the enforcement of rules and regulations" of the Division, with "rules and regulations" defined as "directions issued by the Chief of Police to define the police purpose and the duties and conduct of all members." *Id.*, Nos. 200 and 132.

¹ Although the Sheffield Lake Police Departmental Manual refers to the Police "Department," the City of Sheffield Lake Charter and Codified Ordinances refer to the "Division of Police" as within the "Department of Safety." To avoid confusion, this brief will use the terminology from the Charter and Codified Ordinances and refer to the "Division of Police."

As Chief Administrative Officer of the Division of Police, the Chief of Police is “responsible to the Safety Director” and must administer the Division “under the direction of the Safety Director.” RNSE, Ex. 2-D, No. 202. In Sheffield Lake, the Mayor serves as the Safety Director. Charter, Art. V, § 4. When Officer Pool joined the Division of Police, Anthony Campo was Chief of Police. RNSE, Ex. 2-I, Aff. of S. Davis, ¶ 8 (Pool 000234). Respondent Dennis Bring was and remains the City’s Mayor and Safety Director. JSUF, ¶ 3.

II. In 2019, Chief of Police Anthony Campo implemented Division of Police policies to prevent employees from sharing information about Division activities to Sheffield Lake administration and the public.

In approximately mid-2019, Chief Campo implemented a policy prohibiting Division of Police employees from voicing concerns to anyone at City Hall (including the Safety Director/Mayor) without Chief Campo’s permission. RNSE, Ex. 2-I, ¶ 5, Pool 000234. Chief Campo’s policy was consistent with a policy contained in the Division Manual stating that no police employee may contact the “Mayor or Safety Director with police problems except through regular channels or by permission of the Chief.” RNSE, Ex. 2-D, Dept. Manual, No. 327. Seemingly in furtherance of this policy, in June 2020, an unknown person changed the passcode for the keypad to the door separating the Division of Police offices from City Hall, which are in the same building. RNSE, Ex. 2-I, ¶ 6, Pool 000234. No Division of Police employees received the new code. *Id.*

Chief Campo memorialized this policy in another memorandum that seemed to expand his mandate to prohibit employees from speaking to *anyone* about their concerns:

TO ALL OFFICERS/DISPATCHERS

RE: WHAT YOU HEAR OR SEE HERE STAYS HERE

NO EMPLOYEE OF THIS DEPARTMENT WILL DISCUSS THINGS YOU HEAR OR SEE HERE WITH FRIENDS, FORMER FELLOW EMPLOYEES, ETC...IT IS NOBODY'S BUSINESS OUTSIDE THIS DEPARTMENT WHAT OUR OFFICERS SAY, DO OR DON'T DO.

CONSIDER THIS DEPARTMENT POLICY, PUNISHABLE BY SUSPENSION IF I HEAR IT HAS BEEN VIOLATED.

CHIEF CAMPO

RNSE, Ex. 2-I, Pool 000012.

III. The Sheffield Lake Chief of Police used official Division of Police resources and communication channels to harass employees on the basis of race, ethnicity, religion, and gender.

Officer Pool, who was hired in 2020, was the first Black police officer the City of Sheffield Lake had ever hired. JSUF, ¶¶ 1–2; RNSE, Ex. 1 (Ex. 1 to Petition), ¶ 5. During the same week that Sheffield Lake hired Officer Pool, Chief of Police Anthony Campo told a police dispatcher: “Never did I think I would hire a n*gger.” RNSE, Ex. 2-I, ¶ 8 (Pool 000234). Chief Campo expressed this sentiment to the dispatcher while both were on Division of Police premises. *Id.*

Consistent with his remark about hiring Officer Pool, Chief Campo regularly mocked and harassed Division of Police employees on the basis of race, ethnicity, religion, and gender. During the time Officer Pool worked with Chief Campo, Officer

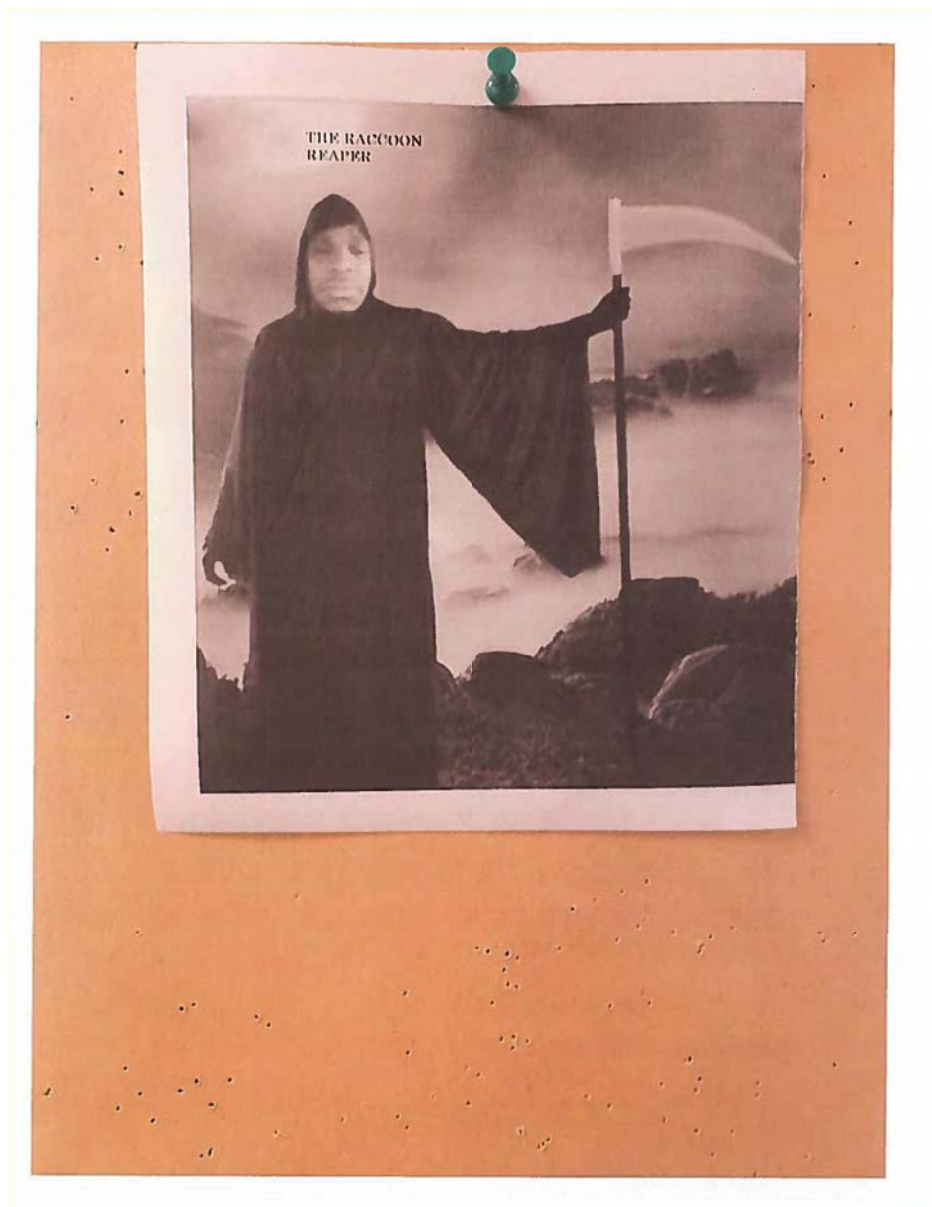
Pool witnessed Chief Campo regularly creating images that mocked Division of Police employees for their race, ethnic background, religion, culture, and sexual orientation. RNSE, Ex. 1 (Ex. 1 to Petition), ¶ 20. Chief Campo created these images, which depicted employees, using a website or app called “Face in Hole,” which inserts photographs of people’s faces into other images where a white “hole” is left open for a face. *Id.*, ¶ 19. While on duty at the police station, Chief Campo would use his City computer to create “Face in Hole” images depicting employees, print them on City printers using City paper, and post them on official bulletin boards, leave them on employees’ desks, or give them to employees. *Id.*, ¶¶ 20–21; RNSE, Ex. 2-I, ¶ 9 (Pool 000234). For his most offensive Face-in-Hole creations, Chief Campo’s practice was to show the images to City employees and then shred them. RNSE, Ex. 1 (Ex. 1 to Petition), ¶ 21 and Ex. 2-I, ¶ 9 (Pool 000234).

By placing these images on the official bulletin boards, Chief Campo made the Face-in-Hole records required reading (or viewing) for all Division of Police employees. An official policy titled “Bulletin Information” required employees to “acquaint themselves daily, when on duty and immediately upon returning to work after days off or other absence with information on the daily reports and logs as well as other departmental orders and publications.” RNSE, Ex. 2-D, Dept. Manual, No. 366. This included the bulletin boards: “Any order posted on the bulletin boards of the Department over the signature of the Chief of Police shall have the same effect as, and be construed as a part of, these rules and regulations.” *Id.*, No. 364.

Patrol officers (like Officer Pool) were required to “report promptly, at the designated hour and place...listen attentively to orders and instructions of his superior officer and read such materials as is [*sic*] made available to him.” RNSE, Ex. 2-D, No. 281. Indeed, failing to read bulletin-board postings could subject Division employees to discipline because they are required to “establish and maintain a working knowledge of all municipal policies of the department and the general and special orders of the department[,]” and “it will be presumed that the member was familiar with the law, rule or policy in question” in any disciplinary proceeding. *Id.*, No. 307.

In addition to these specific policies requiring Division employees to monitor the bulletin boards and read Chief Campo’s posts, Division policies more broadly required employees to follow their commander’s or supervising officer’s orders without complaint. *See id.*, No. 118 (“Failure or deliberate refusal of any member or employee to obey a lawful order given by a superior officer shall be insubordination” and “Ridiculing a superior officer or his orders, whether in or out of his presence is also insubordination. Disrespectful, mutinous, insolent, or abusive language toward a supervising officer is insubordination”), No. 354 (“Every member shall accord respect to his commander, superior or supervisor at all times and shall refrain from critical or derogatory comment on orders received from or issued by him”), No. 354.3 (“Members and employees shall not publicly criticize instructions or orders they have received”).

Chief Campo created and displayed—in the Division of Police offices—"Face in Hole" images that mocked Officer Pool and others on the basis of race or ethnicity. RNSE, Ex. 1, ¶ 24. One such image depicts Officer Pool and refers to him as "the Raccoon Reaper." *Id.*, ¶ 25. "Raccoon" or "coon" is an extremely offensive anti-Black racial slur. *Id.* Chief Campo displayed this image, with the racial slur, on the official bulletin board for approximately three weeks in the fall of 2020:



Id., ¶ 25; E x. 1-B to Petition. Chief Campo has admitted to creating and posting this image of Officer Pool. JSUF, ¶¶ 33–34 (referring to Pool 000065).

Chief Campo has also admitted to creating and posting or distributing this image referring to Officer Pool:



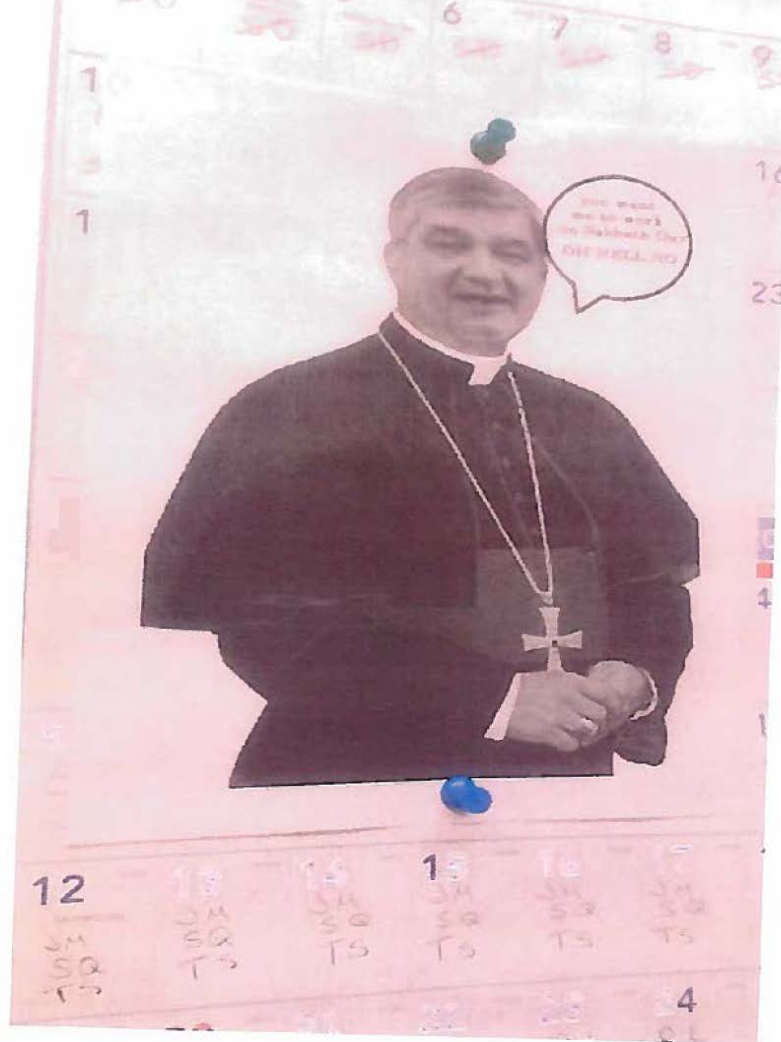
JSUF, ¶¶ 33–34 (referring to Pool 000236).

Officer Pool observed this “Face in Hole” image that Chief Campo made and posted to an official police bulletin board for several weeks in the fall of 2020:



Id., ¶ 26; RNSE, Ex. 1 (Ex. 1-C to Petition); RNSE, Ex. 2-I, Pool 000056. This “Face in Hole” image depicts the City’s only Latino officer, A.J. Torres, on a bottle of hot sauce. *Id.*, ¶ 26. *See also* RNSE, Ex. 2-I, Pool 000057, Pool 00142 (same image posted over calendar or schedule). Mr. Campo admitted to creating these images of Officer Torres and posting them on Division of Police bulletin boards or otherwise distributing them to City employees. JSUF, ¶ 33–34 (referring to Pool 000056, Pool 000057, and Pool 000142).

Chief Campo made multiple “Face in Hole” images mocking Officer Torres’s Catholic religion, which Officer Pool saw displayed in the Division of Police offices.



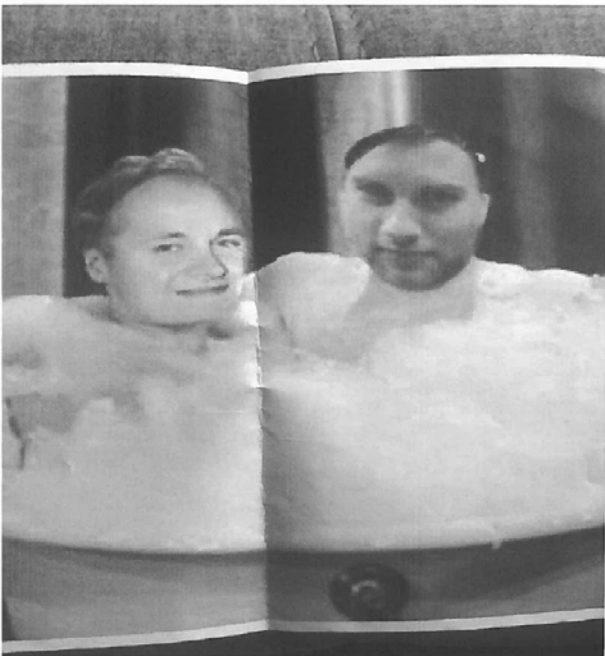
speech bubble on the image above reads: “you want me to work on Sabbath Day OH HELL NO.”). As visible in the image, it was posted over the calendar/shift schedule for Division employees.

Officer Pool also saw a “Face in Hole” image Chief Campo made and posted that mocked officers by invoking the slur “fag” or insinuating that they were engaged in intimate sexual relations with other male officers. RNSE, Ex. 1 (Ex. 1 to Petition), ¶¶ 27–28. Chief Campo admitted to creating and posting or distributing the following images, both of which depict City employees:



The speech bubble in this image reads:
“SALAD CRAZE IS FOR FAGS”

Salad KraZe is a restaurant in the neighboring town of Avon Lake where some officers would take their lunch breaks.



This image depicts two male employees
in a bubble bath together.

JSUF, ¶¶ 33–34 (referring to Pool 000143 and Pool 000147).

Chief Campo regularly created and posted “Face in Holes” ridiculing employees in Division offices between September 2020 and June 2021. RNSE, Ex. 1 (Ex. 1 to Petition), ¶ 29.

IV. Using Division of Police resources, Chief Campo invoked the Ku Klux Klan to intimidate and harass Officer Pool.

On June 25, 2021, Officer Pool arrived for work. He headed to the locker room to change into his uniform, leaving his new raincoat on the booking desk. RNSE, Ex. 1 (Ex. 1 to Petition), ¶ 6. These raincoats are labeled “POLICE” on the back so officers’ affiliation remains visible while performing their duties during inclement weather. *Id.*, ¶¶ 6–7. When Officer Pool returned the booking desk, he saw that someone had placed a piece of paper with the typed words “KU KLUX KLAN” over the “POLICE” label. *Id.*, ¶ 8. Chief Campo used a City computer to type the words “KU KLUX KLAN” and used a City printer to print out a piece of paper with these words. JSUF, ¶ 9. Chief Campo then came into the room and asked other officers to come look at what he done to Officer Pool’s coat. RNSE, Ex. 1 (Ex. 1 to Petition), ¶ 11.

A few minutes later, Chief Campo made a pointy Ku Klux Klan hat out of paper and placed it on his head in the presence of Officer Pool and other police employees. *Id.*, ¶ 14. Chief Campo told Officer Pool that he should wear “one of these” (a Ku Klux Klan hat) when Officer Pool went on his next call. *Id.*, ¶ 16. Although Officer Pool was shocked and upset by Chief Campo’s racist actions, Officer Pool remained professional, controlling his emotions and maintaining his composure until he was alone in his car. *Id.*,

¶¶ 13, 15. These events of June 25, 2021 were captured on surveillance video, and true and correct copies of these videos are attached to the Petition for Mandamus as Exhibits 1-F and 1-G. *Id.*, ¶¶ 37–38.

On June 29, 2021, after Mayor Dennis Bring informed Chief Campo that he would be placed on administrative leave pending an investigation into the June 25, 2021 incident, Chief Campo submitted his notice of retirement, which Mayor Bring accepted. JSUF, ¶¶ 10–11.

V. Relator Keith Pool made a public-records request to Respondents City of Sheffield Lake and Mayor Dennis Bring on July 30, 2021.

On July 30, 2021, Officer Pool, through counsel, made a public-records request to Respondents. JSUF, ¶ 12. The request sought the following categories of records:

- (1) The complete personnel or employment records (including records of training and discipline) for former-Chief of Police Anthony Campo, including his letter of resignation/retirement;
- (2) Records of complaints or grievances/appeals alleging any wrongdoing by Anthony Campo, along with the records created during the grievance/appeal process, including any notes of meetings with the grievant(s) and any communications related to the grievance/appeal;
- (3) Complaints received by Mayor Bring about Mr. Campo and any communications related to these complaints;
- (4) The complete personnel or employment records (including records of training and discipline) for Officer Keith Pool;
- (5) City employment policies, specifically including equal-opportunity employment policies, in effect from 2018 through the present;
- (6) Video recordings of Mr. Campo at the police department on June 25, 2021, specifically including but not limited to video of him (1) wearing a

makeshift Ku Klux Klan hat and placing a “Ku Klux Klan” sign on Officer Pool’s jacket;

- (7) Images of Officer Pool or any other City employee created using “www.faceinhole.com” or any “Face in Hole” app, including any documents printed and maintained in the Division of Police and any image files saved and/or downloaded to the Division of Police computer used by Mr. Campo or on the printer/copier Mr. Campo used to print such images;
- (8) Images or records Mr. Campo created referring to Black Lives Matter or “BLM;”
- (9) Memoranda or other directives issued by Mr. Campo;
- (10) Communications between Mr. Campo and Mayor Bring regarding Officer Pool, including written or electronic communications of any type, such as emails, text messages, instant messages, or communications using any social-media platform;
- (11) Communications between Mr. Campo and any sergeant in the police department regarding Officer Pool, including all written or electronic communications of any type, such as emails, text messages, instant messages, or communications using any social-media platform;
- (12) Communications between Mr. Campo and Officer Pool, including all written or electronic communications of any type, such as emails, text messages, instant messages, or communications using any social-media platform.

See JSUF, ¶ 12 and Ex. 1-A thereto.

VI. Respondents provided a series of deficient partial responses to Relator’s public-records request.

After Respondents provided partial responses to the public-records request on August 20 and August 27, 2021, Respondents’ counsel agreed on September 7, 2021 to provide all remaining responsive documents by September 21, 2021. JSUF, ¶ 13. Respondents provided no additional records by September 21, 2021. *Id.*, ¶ 15. After follow-up correspondence from Officer Pool’s counsel, Respondents’ counsel agreed to

provide a complete response by September 24, 2021. *Id.*, ¶ 16–17. Respondents made another partial production on September 24, 2021. *Id.*, ¶ 18.

In their responses of August 20, August 27, and September 24, 2021, Respondents provided, through outside counsel, the following records:

- (a) Personnel files of Anthony Campo (CAMPO 000001–260) and Keith Pool (CAMPO 000261–300);
- (b) Sheffield Lake’s written policies on hiring (CAMPO 000301–44), uniforms (CAMPO 000347–48 and 000353–54), tobacco use (CAMPO 000349–52), and patrol rifle program (CAMPO 000355–58);
- (c) Undated memorandum from Anthony Campo regarding Division of Police firearms (CAMPO 000359–60);
- (d) Emails from individuals to Dennis Bring (mayorbring@gmail.com) regarding the KKK incident of June 25, 2021 (and emails from Mayor Bring responding to or forwarding these emails) (CAMPO 000361–363, 366–73, 382–97, 405–06, 409–13, 425);
- (e) OPBA letter of agreement (CAMPO 000364–65);
- (f) Copies of summons received in *Maiya McCoy, et al. v. City of Sheffield Lake Police Department, et al.* (CAMPO 000374–79, 414–17);
- (g) Email exchange between Dennis Bring and Richard Geran dated November 26, 2018, which was forwarded to Anthony Campo (CAMPO 000380–81);
- (h) Email exchange between Dennis Bring and Brandy Randolph dated August 20, 2020 and August 23, 2020 (CAMPO 000398–00);
- (i) Sheffield Lake’s City Council Meeting minutes from August 25, 2020 (CAMPO 000401–04);
- (j) Email exchange between cityofsheffieldlake@gmail.com and Lisa Parker dated July 1, 2021 (CAMPO 000407–08);
- (k) Public-records request from George Gerken dated June 29, 2021 (CAMPO 000418);

- (l) Letters from Dennis Bring to Anthony Campo dated June 29, 2021 (CAMPO 000419 and CAMPO 000421);
- (m) Letter from Anthony Campo to Tammy Smith dated June 29, 2021 (CAMPO 000420);
- (n) Email from phastingslead@gmail.com to Anthony Campo dated November 13, 2019 with no content in body of email (CAMPO 000422);
- (o) Emails from Anthony Campo to Brandy Randolph dated August 20, 2020 (CAMPO 000423) and May 21, 2017 (CAMPO 000426), and from Anthony Campo to Heather Cloutier dated September 2, 2020 (CAMPO 000424);
- (p) Email from David Graves to James Burge dated July 7, 2021 (CAMPO 000427);
- (q) Video and photograph files from June 25, 2021.

JSUF, ¶ 19. On September 29, 2021, Officer Pool's counsel asked Respondents' counsel whether the response to the request was complete, and Respondents' counsel did not respond. *Id.*, ¶¶ 20–21.

Relator knew that additional responsive records existed, and after receiving no further response from Respondents or their counsel, filed the Petition for Mandamus on November 11, 2021. RNSE, Ex. 1 (Ex. 1 to Petition), ¶¶ 18–36. When he filed his Petition, Respondents admittedly had not provided any of the following records that Officer Pool believed or knew to exist:

- a. Records of training provided to Mr. Campo regarding equal employment opportunity and diversity issues (Items Nos. 1 and 4 from the public-records request);
- b. Complaints received by Mayor Bring about Mr. Campo and any communications related to these complaints (Item No. 3 from the request);
- c. Images of Officer Pool or any other City employee created using "www.faceinhole.com" or any "Face in Hole" app, including any

documents printed and maintained in the Division of Police and any image files saved and/or downloaded to the Division of Police computer used by Mr. Campo or on the printer/copier Mr. Campo used to print such images (Item No. 7);

- d. Images or records Mr. Campo created referring to Black Lives Matter or “BLM” (Item No. 8 from the request);
- e. Communications between Mr. Campo and Mayor Bring regarding Officer Pool (Item No. 10 from the request);
- f. Communications between Mr. Campo and any sergeant in the police department regarding Officer Pool (Item No. 11 from the request);
- g. Communications between Mr. Campo and Officer Pool (Item No. 12 from the request).

JSUF, ¶ 22. Officer Pool had personal knowledge that Mr. Campo created and displayed images responsive to Item No. 7 and that Mr. Campo had issued memoranda or directives not provided by Respondents in response to Item No. 9. RNSE, Ex. 1 (Ex. 1 to Petition), ¶¶ 18–36.

When Relator filed his Petition on November 11, 2021 (104 days after submitting his public-records request), Respondents had not asserted any legal exemption to providing these records. JSUF, ¶ 23. Nor had Respondents advised that the records had been destroyed or otherwise did not exist. RNSE, Ex. 1 (Ex. 2 to Petition), ¶¶ 23–24. The Petition asked the Court for a peremptory writ of mandamus directing Respondents to make these records available and for the Court to award statutory damages, attorneys’ fees, and costs. *Id.*, Ex. 1, p. 23.

VII. On January 31, 2022, Respondents advised that certain records did not exist and asserted—for the first time—their position that other requested records were not “public records.”

On January 31, 2022, Respondents’ counsel advised that no further records that would have been responsive to several categories of the request existed. This included records of Mr. Campo’s training, records of complaints about Mr. Campo, communications between Mr. Campo and Mayor Bring or any sergeant regarding Officer Pool, and communications between Mr. Campo and Officer Pool. Such records would have been responsive to Items Nos. 1, 3, 4, 10, 11, and 12 of the request. RNSE, Ex. 2-D.

In the same January 31 correspondence, Respondents’ counsel asserted for the first time that they did not believe that Item 7 of the request, which sought images Mr. Campo created depicting Officer Pool or any other City employee using the “Face in Hole” website or app, sought public records subject to disclosure under R.C. 149.43. Ex. 2-D.

VIII. Respondents never produced at least two memoranda issued by Chief Campo.

Item 9 of the request asked Respondents to provide “[m]emoranda or other directives issued by Chief Campo.” JSUF, ¶ 12 and Ex. 1-A thereto. Mr. Campo created and distributed two memoranda in April 2021 that Respondents failed to provide either before or after Relator filed the Petition. RNSE, Ex. 1 (Ex. 1 to Petition), ¶¶ 34–35 and Exs. 1-D and 1-E to Petition; JSUF, ¶¶ 36–37.

The first memorandum, issued April 14, 2021, provided as follows:

To: Patrol Division 04/14/21

Today on my way to work around 8:45AM I observed a couch on the tree lawn at 745 Irving Park. Bulk trash pick up is not until 04/27/21.

At 2:30 I noticed it was still there. I would have thought our day shift patrol would have patrolled Irving Park and seen this big ole couch sitting there, silly me.

I should have taped a comp time card to it, someone would have surely seen it.

Chief Tony Campo

RNSE, Ex. 1 (Ex. 1-D to Petition).

The second memorandum, dated April 15, 2021, provided as follows:

TO: PATROL DIVISION 04/15/21

RE: PATROLING WITH YOUR EYES OPEN

A.K.A. LAZINESS

A CAR WAS PARKED IN A FRONT YARD OF A RESIDENCE ON HARRIS ROAD FOR OVER TWO DAYS, I DROVE BY IT EVERY TIME I LEFT THE STATION.

NO-ONE ELSE HERE SAW IT ? THE CAR SAT THERE FOR TWO DAYS, THAT'S SIX SHIFTS AND NO-ONE SAW IT ? IT WOULD STILL BE SITTING THERE IF I DIDN'T SEND SOMEONE TO DEAL WITH IT. I GUESS I MISSED THE PART OF THE CONTRACT THAT SAYS EMPLOYEES CAN BE LAZY AND IGNORE THE ORDINANCES THEY TOOK AN OATH TO ENFORCE, **PATHETIC.**

THE CHIEF

RNSE, Ex. 1 (Ex. 1-E to Petition).

Respondents admit that they have never provided either of these two memoranda in response to the request. JSUF, ¶¶ 36–37. Respondents have submitted no evidence to contradict Relator’s testimony that Mr. Campo authored and distributed these memoranda. *See* RNSE, Ex. 1 (Ex. 1 to Petition), ¶¶ 34–35. Respondents have never asserted any legal exemption to justify withholding the memoranda. Nor have Respondents urged that these memoranda do not exist or are not public records.

IX. Respondents failed to produce the *Division of Police Manual* until after Relator filed his Petition.

On January 31, 2022, more than six months after Relator sent the request and more than two months after Relator filed the Petition, Respondents provided the “Sheffield Lake Police Department Manual,” which contained memoranda and directives from Mr. Campo and was therefore also responsive to Item No. 9 of the request. JSUF, ¶ 38; Ex. 2-D; JSUF, ¶ 12 and Ex. 1-A. Indeed, *the first page of the manual* contains a signed directive from Mr. Campo ordering police officers that the manual “shall be read, fully understood, and strictly adhered to by all department members.” *Id.* The manual contained policies promulgated under the authority of the Chief of Police and updated by Mr. Campo’s memoranda. *See id.*, unnumbered. pp. 129, 194, 195, 243, and 460–61.

X. Respondents never produced at least 12 “Face-in-Hole” records that Chief Campo admittedly created and posted to Division of Police bulletin boards or distributed to Division employees while on duty.

After Relator filed his Petition, former-Chief Campo acknowledged that he created certain “Face in Hole” images, including those described above. JSUF, ¶¶ 25, 29–35. Mr.

Campo admittedly emailed “Face in Hole” images from his City email address on his City-issued computer and showed certain “Face in Hole” images to City employees when he was on-duty and on City property. *Id.*, ¶¶ 26–27.

Mr. Campo further admitted to posting certain “Face in Hole” images to the police department’s bulletin boards, including the images depicting Relator as “the Raccoon Reaper” and Officer A.J. Torres on a hot-sauce bottle described above. JSUF, ¶¶ 28–29, 31. The photographs of some of Chief Campo’s images show that he posted them on bulletin boards, including over the Division of Police calendar. *See* RNSE, Ex. 2-I, Pool 000057, Pool 000059 (images of A.J. Torres on hot-sauce bottle and priest attire), Pool 000060 and 000136 (image of two City employees romantically embracing in a bubble bath placed on bulletin board); Pool 000065 (image of Officer Pool with label “The Raccoon Reaper” tacked to a bulletin board).

Mr. Campo has admitted to creating all of the following images that depict City employees and posting them on Division of Police bulletin boards or otherwise distributing them to City employees: Pool 000056, Pool 000057, Pool 000058, Pool 000059, Pool 000060, Pool 000061, Pool 000062, Pool 000063, Pool 000064, Pool 000065, Pool 000134, Pool 000135, Pool 000136, Pool 000137, Pool 000138, Pool 000139, Pool 000141, Pool 000142, Pool 000143, Pool 000144, Pool 000146, Pool 000147, and Pool 000236. JSUF, ¶¶ 33–34. Respondents admittedly provided none of these (including at least 12 unique “Face in Hole” records) in response to the public-records request. JSUF, ¶¶ 29–35.

XI. Respondents provided some, but not all, “Face in Hole” images on April 4, 2022.

Respondents provided several of Chief Campo’s emails on February 18, 2022. JSUF, ¶ 39. Many of these emails referenced attached images but contained the notation “attachment stripped.” No attachments accompanied the emails. *Id.* On February 24, 2022, Officer Pool’s counsel informed Respondents’ counsel of the issue and identified emails for which Relator would like to receive the attachments by receiving the native email files instead of the PDFs provided. *Id.*, ¶ 40. Respondents eventually provided some of the requested attachments on April 4, 2022. *Id.*, ¶ 41. The records provided on April 4 contained “Face in Hole” images Mr. Campo created and distributed while working as Chief of Police. *Id.*, ¶ 42.

But Respondents failed to actually provide the attachments from Chief Campo’s sent emails. Respondents’ counsel advised on April 4 that the attachments had been stripped “as a result of a setting implemented in [Sheffield Lake’s] computer system.” RNSE, Ex. 2-E. Rather than actually retrieve the attachments from Chief Campo’s sent emails, counsel “re-constructed the attachments from as many recipient accounts as we were able to access.” RNSE, Ex. 2-E. A computer-system setting that automatically strips attachments from sent emails risks destroying or losing access to any number of public records, preventing public access no matter how quickly a requester submits a request.

The “Face in Hole” records provided April 4, 2022 included the .jpg and .png images labeled as follows: Image 121796735.jpg, Image 123.jpg, Image Kelkor.png, Image

Ozzy.jpg, Download(5)(1).png, Download (9).png, Download (11).png, Download (13).png, Download (14).png, and Sack.jpg. RNSE, Ex. 2, ¶ 8 and Ex. 2-E.

ARGUMENT

The Ohio Public Records Act empowers citizens to hold government actors accountable, and its requirements must be construed in favor of transparency and disclosure.

The Public Records Act enshrines in law Justice Brandeis’s immortal adage about publicity: “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” Brandeis, Louis, *What Publicity Can Do*, HARPER’S WEEKLY (20 Dec. 1913). Officer Pool, as a City resident and police officer, asks this Court to shine a light on the activities of the Sheffield Lake Division of Police by issuing a peremptory writ of mandamus.

It is axiomatic that in Ohio, “public records are the people’s records, and that the officials in whose custody they happen to be are merely trustees for the people[.]” *Patterson v. Ayers*, 171 Ohio St. 369, 371, 171 N.E.2d 508 (1960) (citation omitted). It has long been Ohio policy “as reflected in the Public Records Act and as acknowledged by this [C]ourt, 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.

The purpose of the Public Records Act “is to expose government activity to public scrutiny, which is absolutely essential to the proper working of a democracy.” *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105, ¶ 9 (citation

omitted). In keeping with this purpose, the Court construes the statute “liberally in favor of broad access and resolve[s] any doubts in favor of disclosure of public records.” *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 13.

Under R.C. 149.43(B)(1), a public office or person responsible for public records “shall make copies of requested public records available to the requester” within “a reasonable period of time.” A relator seeking to enforce this provision must establish entitlement to mandamus relief by clear and convincing evidence. *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor’s Office*, 133 Ohio St.3d 139, 2012-Ohio-4246, 976 N.E.3d 877, ¶ 16, citing *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, ¶ 3 of syllabus. The “clear and convincing” evidentiary standard requires more than a preponderance of the evidence but less than “beyond a reasonable doubt.” *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E. 2d 1215, ¶ 18.

To prevail in a petition seeking a writ of mandamus, a relator must prove: (1) the relator has a clear legal right to the requested relief and (2) the respondents had a clear legal duty to perform the act requested. *State ex rel. Van Gundy v. Indus. Comm.*, 111 Ohio St.3d 395, 2006-Ohio-5854, 856 N.E. 2d 951, ¶ 13; *State ex rel. Fields v. Cervenik*, 8th Dist. Cuyahoga No. 86889, 2006-Ohio-3969, ¶ 4. In a public-records mandamus action like this one, a relator is not required to prove the lack of adequate remedy at law. *State ex rel. Gaydosh v. Twinsburg*, 93 Ohio St.3d 576, 580, 757 N.E. 2d 357 (2001).

Should any doubt or ambiguity exist as to the public office's duty, Ohio courts must liberally interpret public-records law in favor of disclosure. *State ex rel. Bardwell v. Cuyahoga Cnty. Bd. of Comm'rs*, 127 Ohio St.3d 202, 2010-Ohio-5073, 937 N.E. 2d 1274, ¶ 10; *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 8th Dist. No. 102961, 2016-Ohio-2625, ¶ 4 (reviewing evidence and finding in favor of disclosure). The twin determinations of whether the relator had a clear legal right and whether the respondent had a clear legal duty may require courts to interpret "constitutions, charters, and statutes[.]" *State ex rel. Fattlar v. Boyle*, 83 Ohio St.3d 123, 125, 698 N.E.2d 987 (1998), citing *Tomino v. Brown*, 47 Ohio St.3d 119, 120, 549 N.E.2d 505 (1989); *State ex rel. Ashbrook v. Brown*, 39 Ohio St.3d 115, 117, 529 N.E.2d 896 (1988).

As detailed below, Relator Keith Pool had a clear legal right to receive timely production of all memoranda and directives issued by Chief Campo for the requested two-year period and all "Face in Hole" images Chief Campo created and posted or distributed in the workplace. Respondents have failed to honor their clear legal duties under the Public Records Act. Based on Relator's showing, the Court should grant a writ of mandamus ordering Respondents to provide all memoranda or directives issues by former-Chief of Police Anthony Campo from July 30, 2019 to July 30, 2021 and all "Face in Hole" images Chief Campo created and posted to official Division of Police bulletin boards or distributed to employees. The Court should also award Officer Pool statutory damages, court costs, and attorneys' fees.

PROPOSITION OF LAW NO. 1: Relator is entitled to a writ of mandamus compelling production of additional memoranda or directives issued by the Sheffield Lake police chief between July 30, 2019 and July 30, 2021.

“Mandamus is an appropriate remedy to compel compliance with Ohio's Public Records Act.” *State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. and Corr.*, 156 Ohio St.3d 56, 2018-Ohio-5133, 123 N.E.3d 928, ¶ 12, *citing* R.C. 149.43(C)(1)(b). This Court has “consistently held that the Public Records Act ‘is construed liberally in favor of broad access, and any doubt is resolved in favor of disclosure of public records.’” *Id.* at ¶ 12, *citing* *Gilbert v. Summit Cnty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, 821 N.E.2d 564, ¶ 7, *quoting* *State ex rel. Cincinnati Enquirer v. Hamilton Cnty.*, 75 Ohio St.3d 374, 376, 662 N.E.2d 334 (1996).

Here, the Court should grant a peremptory writ ordering Respondents to produce then-Chief Campo’s memoranda or directives issued during the two years before July 30, 2021, in response to Item No. 9 of the public-records request. Written memoranda or directives issued by a police chief unquestionably fall within the definition of “record” under R.C. 149.011 because they are documents that “serve[] to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” R.C. 149.011(G). Former-Chief Campo’s memoranda or directives are “kept” by a “public office” (the Division) and thus subject to the production requirements of R.C. 149.43(A)(1). *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 38 (government official’s “directives” are records subject to disclosure).

Officer Pool had a clear legal right to request a Chief of Police's memoranda or directives over a two-year period, and Respondents had a clear legal duty to provide these records. *See State ex rel. Van Gundy v. Indus. Comm.*, 111 Ohio St.3d 395, 2006-Ohio-5854, ¶ 13; *State ex rel. Fields v. Cervenik*, 8th Dist. No. 86889, 2006-Ohio-3969, ¶ 4.

Relator has submitted clear and convincing evidence that Respondents failed to provide all memoranda or directives issued by Chief Campo for this two-year period: the two memoranda that Respondents admittedly never provided. JSUF, ¶¶ 36–37; Ex. 1 to Petition, ¶¶ 34–35. Respondents have not disputed Relator's testimony that these memoranda—which they admittedly did not provide in response to the public-records request—were authored and distributed by Chief Campo on April 14, 2021 and April 15, 2021. Nor have Respondents asserted that these memoranda or other responsive records did not exist (or were destroyed). Instead, Respondents' counsel merely advised on January 31, 2022 that “[a] number of Mr. Campo's directives and memorandum [sic] have already been provided to counsel” and that Respondents were supplementing the response with the Departmental Manual “which includes departmental policies and memoranda.” RNSE, Ex. 2-D.

Relator's evidence that Respondents did not provide at least two responsive records definitively proves that the response is incomplete. This undisputed evidence of non-compliance meets the “clear and convincing” standard required for issuing a peremptory writ.

Based on this showing, Relator respectfully asks the Court to issue a peremptory writ ordering Respondents to provide all memoranda or directives issued by Chief Anthony Campo from July 30, 2019 to July 30, 2021.

PROPOSITION OF LAW NO. 2: When an on-duty police chief creates documents at the police station using municipal resources and posts these documents to official bulletin boards that employees are required to read daily and distributes these documents to employees, the documents are public records under R.C. 149.011(G) and R.C. 149.43(A)(1). The Court should issue a peremptory writ of mandamus compelling Respondents to produce all such records.

I. The police chief's "Face in Hole" images meet all three requirements for "public records" and are subject to disclosure.

Public records are "records kept by any public office[.]" R.C. 149.43(A)(1). For Chapter 149 of the Ohio Revised Code, "records" are defined as:

any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, 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.

R.C. 149.011(G) (emphases supplied.) The Ohio Public Records Act does not contain any specific requirements regarding how public offices should "keep" records but requires a public office must organize and maintain its public records so it can make records available for inspection or copying in response to requests. R.C. 149.43(B)(2).

The broad definition of "record" includes "anything a governmental unit utilizes to carry out its duties and responsibilities." *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 1998-Ohio-180, 83 Ohio St.3d 61, 63, 697 N.E.2d 640, citing *State ex rel. Mazzaro*

v. Ferguson, 49 Ohio St.3d 37, 39, 550 N.E.2d 464 (1990), quoting *State ex rel. Jacobs v. Prudoff*, 30 Ohio App.3d 89, 92, 506 N.E.2d 927, 930 (9th Dist. 1986). As Chief of Police, Mr. Campo's "duties and responsibilities" included communicating with and providing directives to Division of Police employees as part of his administration and supervision of police personnel. Chief Campo decided to use these images to communicate with and supervise Division employees, all of whom were subordinate to him. While it was certainly offensive and unlawful for Chief Campo to use distasteful images to fulfill his duties and responsibilities, the law does not except offensive records from disclosure where the public official *actually used* the records in this manner. Particularly when they are created on City time, on City property, and using City resources—by a Division head.

Under R.C. 149.011 and R.C. 149.43, documents are "public records" if they are "(1) documents, devices, or items, (2) created or received by or coming under the jurisdiction of the state agencies, (3) which serve to document the organization, function, policies, decisions, procedures, operations, or other activities of the office." *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 20, quoting *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 822 N.E.2d 274, ¶ 19; R.C. 149.011(G). The "Face in Hole" images Relator sought in Item No. 7 of the request meet all three requirements.

A. The “Face in Hole” records are “documents” or “items” under R.C. 149.011(G), regardless of format.

First, the Face-in-Holes are “documents” or “items” under R.C. 149.011(G). The Face-in-Holes exist (or existed) in two formats: as paper documents posted to bulletin boards and as digital images, which Respondents’ April 4, 2022 production demonstrates. JSUF, ¶¶ 33–34; RNSE, Ex. 2 at ¶ 8 and Ex. 2-E. R.C. 149.011(G). Digital images meet the definition of “electronic record” in R.C. 1306.01 (“a record created, generated, sent, communicated, received, or stored by electronic means”). The Face-in-Hole images are “documents” or “items” in either format, satisfying the first requirement.

B. The “Face in Hole” records were “created or received by” and came “under the jurisdiction of” the Sheffield Lake Division of Police, in satisfaction of R.C. 149.011(G).

Second, the “Face in Hole” records were “created or received by” and came “under the jurisdiction” of the City of Sheffield Lake Division of Police. The City of Sheffield Lake “created” these records through the actions of its Chief of Police. Chief Campo, who was officially designated as the Chief Administrative Officer for the Division of Police, created these images on a City computer, printed them on a City printer, posted them on City police bulletin boards for official orders and schedules, transmitted them using City email, and otherwise distributed them to City employees. In all aspects of creating these documents, Chief Campo acted in his official capacity and used City resources.

The City of Sheffield Lake “received” the images because the police chief posted them to the Division’s official bulletin boards, which officers were required to monitor to

read all postings. The City also “received” the images when the police chief distributed the images to City personnel by leaving the printed images on employees’ desks, emailing them to employees, or showing employees the images.

Simultaneously, the “Face in Hole” records came “under the jurisdiction” of the City of Sheffield Lake Division of Police because they were present on Division bulletin boards (in paper form) on and Chief Campo’s computer and the Division printer’s memory (in electronic form). The images were given to City employees on City premises and attached to emails Chief Campo sent to City employees over the City’s email system. The “Face in Hole” records came under the City’s jurisdiction because they were present, accessible, and maintained in City facilities and devices.

C. The “Face in Hole” records document the Division of Police’s “procedures, operations, or other activities” and the Chief of Police used them to carry out his duties and responsibilities (albeit in an offensive manner).

Third, the Face-in-Holes document the “decisions, procedures, operations, or other activities” of the Sheffield Lake Division of Police. These images document the “decision” of the City, through its duly appointed Chief of Police, to administer his Division by harassing employees on the basis of race, gender, religion, ethnicity, and sexual orientation. These images serve to document Chief of Police’s “procedures” for communication with and about City employees, including through the official bulletin board. The images provide evidence of the Division’s “operations” because they showed

that the Chief of Police was operating the Division by using two official employee-communication channels to harass employees.

Both the “Face in Hole” images that Chief Campo posted on the bulletin boards and those he gave or emailed to Division employees documented the “activities” of the Division. The offensive manner in which Chief Campo communicated with employees under his supervision does not rob the communications of their official character or change their status as documentation of “activities.” The text of the Public Records Act, which does not limit “activities” to lawful or inoffensive activities, supports this result. Indeed, the fact that Chief Campo was abusing the power of his office makes disclosure all the more necessary.

Subordinate employees were not free to ignore communications from the Chief Administrative Officer of the Division of Police. Division rules and regulations ordered these employees to check the bulletin boards daily, and they were required to accept communications from the Chief of Police. RNSE, Ex. 2-D, Dept. Manual, Nos. 364, 366, and 281. Employees would risk discipline for insubordination if they attempted to evade the bulletin board or Chief Campo’s in-person or email communications. *Id.*, Nos. 118, 200, 354, and 354.3.

The overriding purpose of the Public Records Act—to “expose government activity to public scrutiny” as an essential component of a functioning democracy—further supports the proposition that items documenting an agency’s improper

“decisions, procedures, operations, or other activities” are “public records.” *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105, ¶ 20. If government entities were only required to disclose documentation of proper and lawful activities, the public would have nothing to scrutinize. The misuse of public resources—such as using government technology and supplies for unlawful purposes—likewise puts the Chief of Police’s use of “Face in Hole” images squarely within the type of records that must be open to public scrutiny.

A narrow construction of “decisions, procedures, operations, or other activities” that failed to include inappropriate or offensive activities of, say, a Division’s Chief Administrative Officer, would wholly undermine the Act’s primary function to let in the sunlight (or turn on an electric light) and would contradict the Court’s construction of the Act “in favor of broad access.” *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 13.

II. Respondents’ contention that the “Face in Hole” images Chief Campo created and shared in the workplace are not “records” is unreasonable and unsupported.

The Public Records Act requires a public office that denies a public-records request in whole or in part to “provide the requester with an explanation, including legal authority, setting forth why the request was denied.” R.C. 149.43(B)(3). When the request was made in writing, the explanation of the denial must also be in writing. *Id.* On January 31, 2022, more than six months after Officer Pool made his public-records request and

more than two months after Officer Pool filed the Petition, Respondents advised for the first time regarding the images requested in Item 7 that they “do not believe these to be public records as they were not sued to carry out or document the official functions of the police department nor were they actually used for that purpose.”

Although Respondents may believe, as indicated in Respondent Bring’s Affidavit, that the “Face in Hole” images Chief Campo created, posted, and distributed do not document the Division’s “legitimate” or “authorized” activities, these documents nonetheless documented the *actual* functions, decisions, procedures, operations, and “other activities” of the City. The Public Records Act contains no exemption distinguishing between “legitimate” and “illegitimate” or “authorized” and “unauthorized” activities. Respondent Bring’s position that Chief Campo’s actions were “unauthorized” is unpersuasive, given Respondent Bring’s legal obligations to monitor and supervise the Division of Police, including the performance of the Chief and given Respondent Bring’s frequent presence in the Division when these images were posted. RNSE, Ex. 1 (Ex. 1 to Petition), ¶ 30; Ex. 2-D, No. 202; Sheffield Lake Charter, Art. V, § 4.

That the Face-in-Holes document the activities of this public workplace is further supported by the Ohio Civil Rights Commission’s recent finding of probable cause that the City had engaged in violations of the anti-discrimination laws, in part through the posting of the “Face in Hole” images. *See* Mot. to Supp. Record Evid., Exs. 1-B, 1-D, and 1-F. Mr. Campo’s open and unapologetic creation of a hostile work environment through

misadministration of the Division he was charged with running is precisely the type of government misconduct that the Public Records Act is intended to expose. The request seeks public records that should be provided.

The authorities Respondents cited in support of their January 31, 2022 contention that the posts were not “records” are distinguishable and do not support narrowing the definition of “records” to exclude the “Face in Hole” records. In *Wilson-Simmons v. Lake County Sheriff’s Department*, 82 Ohio St.3d 37, 693 N.E.2d 798 (1998), Wilson-Simmons, a corrections officer, made a public-records request for email exchanges in which other officers were allegedly using racial slurs about her. *Id.* at 38. In finding that the requested email was not a “record” because it did not “document the organization, functions, policies, decisions, procedures, operations, or other activities of the sheriff’s department,” the Court emphasized that the email was sent to and from “individual co-workers” and “circulated only to a few co-workers.” *Id.* at 41. The Court further reasoned that Wilson-Simmons did not present evidence that the email documented the sheriff’s department policy or procedures and found that the email was not used to conduct the business of the public office. *Id.* at 41–42.

In contrast to the emails in *Wilson-Simmons*, Chief Campo’s Face-in-Holes were not sent privately to and from co-workers of equal rank to Officer Pool: they were publicly posted and otherwise distributed by the Chief of Police to employees under his supervision. While in *Wilson-Simmons*, the relator did not argue that the emails presented

evidence of departmental policy or procedures, Sheffield Lake's policies and procedures required employees to read what the Chief of Police posted on bulletin boards. Anything posted on these boards thus documented the Division's policies and procedures, as promulgated by the Division's Chief Administrative Officer.

In *State ex rel. Rhodes v. Chillicothe*, 4th Dist. Ross No. 12CA3333, 2013-Ohio-1858, another case Respondents cited in their belated denial that the "Face in Hole" images are "records," a requestor sought copies of photographs and video images captured by a traffic camera from a city. *Id.*, ¶ 8. The cameras belonged to a third-party contractor, and the contractor stored all images on its own computer but sent images showing potential traffic violations to the city. *Id.*, ¶ 6. The Court of Appeal held that all images sent to the city from the contractor were public records subject to disclosure, but that any images the contractor did not forward to the city were not public records. *Id.*, ¶ 28. Of note, the Fourth District determined that all images reviewed by the city, *even those that the city decided did not show a violation*, were "used by the city in performing a governmental function and in making decisions[.]" *Id.*, ¶ 36.

Respondents' January 2022 correspondence also cited to *State ex rel. Community Press v. City of Blue Ash*, 2018-Ohio-2506, 116 N.E.3d 755 (1st Dist.), which concerned documents and communications related to an employee-professional-development project. The documents at issue involved reports based on compilations of anonymous feedback for the employees' edification. *Id.*, ¶ 3. Each report was provided only to the

employee being assessed. The city did not place the reports in personnel files, take action based on feedback provided, or require employees to do anything based on the reports. *Id.*, ¶ 4. Here, by contrast, the Chief of Police created and posted these records to publicly mock and humiliate, rather than privately edify, his employees.

Respondents also invoked *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 1998-Ohio-180, 697 N.E.2d 640, where the Court examined whether letters sent to a judge urging her to make a sentencing decision were public records. Although the judge received the letters and placed them in her files, she did not consider the letters when making her sentencing decision. Because she did not actually use the letters to carry out her duties, the letters were not public records and did not document the “organization, functions, policies, decisions, procedures, or other activities” of her office. *Id.* at 642. In the present case, the images were generated by the Chief of Police himself and used to carry out his duties to supervise and direct the Division of Police.

Finally, Respondents’ position is not supported by *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274 or *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 610 N.E.2d 997 (1993). Those cases are irrelevant because they involved the home addresses and other “personal information” (as defined in R.C. 1347.01(E)) of state employees, which Officer Pool did not request.

PROPOSITION OF LAW NO. 3: A public office has a clear legal duty to produce public records to a requester within a reasonable period of time, and six months is not a reasonable period of time to produce a departmental manual.

The Public Records Act does not define what constitutes a “reasonable period of time,” but this Court has explained that “the determination of what is ‘reasonable’ depends upon all the pertinent facts and circumstances.” *State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 13, 2018-Ohio-5108, 123 N.E.3d 887, ¶ 16, quoting *State ex rel. Cincinnati Enquirer v. Deters*, 148 Ohio St.3d 595, 2016-Ohio-8195, 71 N.E.3d 1076, ¶ 23. This Court has often recognized the importance of compliance within a “reasonable period of time.” See *State ex rel. Miller v. Ohio Dept. of Educ.*, 10th Dist. Franklin No. 15AP-1168, 2016-Ohio-8534, ¶ 8 (delay of 61 days was unreasonable where “the limited number of documents sought by relator in his public records request were clearly identified and should not have been difficult to locate, review, and produce” and respondent’s only excuse was the Thanksgiving, Christmas, and New Year’s holidays); *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Educ.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82, ¶¶ 38-39 (six-day delay was neither prompt nor reasonable where relator’s requests were not ambiguous and respondent had access to records); *State ex rel. Wadd v. Cleveland*, 81 Ohio St.3d 50, 53, 689 N.E.2d 25 (1998) (delay of 24 days to provide accident reports was neither prompt nor reasonable); *State ex rel. Warren Newspapers, Inc. v. Hutson*,

70 Ohio St.3d 619, 624, 640 N.E.2d 174 (four-month delay in responding to request for “all incident reports and traffic tickets written in 1992” was neither prompt nor reasonable).²

It was unreasonable for Respondents to wait more than six months to provide the Department Manual comprising orders, directives, and memoranda from Chief Campo in response to the request for his “directives and memoranda.” Respondents had possession of and access to the manual, and it was clearly responsive to this item of the request. Respondents have presented no evidence to show that it required careful examination or redactions before production—and, indeed, no redactions were made. *See* Ex. 2-D. Nor did Respondents assert any legal exemptions to justify this late production.

To remedy this unreasonably untimely production, Relator requests statutory damages, court costs, and attorneys’ fees, as set forth more fully in Proposition of Law No. 5.

² The Public Records Act’s federal counterpart, the Freedom of Information Act, likewise recognizes the urgency of obtaining public records. *See, e.g., Gilmore v. Dep’t of Energy*, 33 F. Supp. 2d 1184, 1189 (N.D. Cal. 1998) (“intentionally set harsh time limits for agencies to respond to FOIA requests because it recognized that information is often useful only if it is timely.”); *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994), *superseded by rule on other grounds*, *Bond v. Utreras*, 585 F.3d 1061, 1068 (7th Cir. 2009) (“To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.”). *See also* H.R. Rep. 98-985, 5-6, 1984 U.S.C.C.A.N. 5779, 5783–84 (“the value of disclosed information is transitory. If this information is not released in a timely manner, it may be of no value at all.”).

PROPOSITION OF LAW NO. 4: A delay of more than eight months to issue a partial response to the request for “Face in Hole” images is unreasonable.

The same authorities cited in support of Proposition of Law No. 3 render Respondents’ delay of more than eight months to make a partial production of “Face in Hole” images unreasonable. *See also State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 13, 2018-Ohio-5108, 123 N.E.3d 887, ¶¶ 14-20 (a delay of more than eight months to produce responsive records was not reasonable). Respondents have violated R.C. 149.43, and Relator requests an award of statutory damages, court costs, and attorneys’ fees as detailed in Proposition No. 5 below.

PROPOSITION OF LAW NO. 5: An aggrieved requester is entitled to recover statutory damages, costs, and attorneys’ fees where a public office fails to meet its clear obligations under R.C. 149.43.

Respondents have not complied with Officer Pool’s July 30, 2021 public-records request. He had to seek mandamus relief with this Court to secure belated partial compliance. The evidence merits an award of statutory damages, costs, and attorney fees.

I. A statutory-damages award is appropriate given Respondents’ belated partial compliance with their obligations under the Public Records Act.

Under R.C. 149.43(C)(2), a relator in a mandamus action is entitled to statutory damages if the relator transmitted a written public-records request and the public office failed to timely comply with the obligations of R.C. 149.43(B). *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E. 3d 598, ¶ 52; *State ex rel. Cordell v. Paden*, 156 Ohio St.3d 394, 2019-Ohio-1216, 128 N.E.3d 179, ¶ 13.

Statutory damages are not a penalty; they compensate relators for the lost use of public information, and the law conclusively presumes the existence of this injury. R.C. 149.43(C)(2). Statutory damages are fixed at \$100 for each day the respondent fails to comply with R.C. 149.43(B), for a maximum of \$1,000 for each category of requested records. R.C. 149.43(C)(2); *State ex rel. Bristow v. Baxter*, 6th Dist. No. E-18-026, 2019-Ohio-214, ¶ 43 (relator was entitled to \$3,000 in statutory damages for failure to comply with request for (1) personnel files, (2) time-off requests, and (3) public records policies).

Here, Officer Pool submitted a proper written request, which “fairly describe[d] the public record or class of public records” he sought. R.C. 149.43(C)(2). He sought 12 categories of records. RNSE, Ex. 1 (Ex. 1-A to Petition). Respondents have never produced some of the requested records, even after almost 13 months, and unreasonably delayed producing other records. Because Respondents have failed to comply with their obligations under R.C. 149.43(B), Officer Pool is entitled to the maximum allowable statutory-damages award under R.C. 149.43(C)(1)(b) and R.C. 149.43(C)(2). Because Relator has submitted clear and convincing evidence that Respondents failed to timely provide the records requested in response to two different requests (Item No. 7, “Face in Hole” images, and Item No. 9, memoranda and directives), the Court should award Officer Pool \$2,000 in statutory damages.

II. The Court should award Officer Pool his costs in this mandamus action.

The Public Records Act provides that if the Court orders compliance in the mandamus action, it “shall determine and award to the relator all court costs.” R.C. 149.43(C)(3)(a)(i). Court costs are also mandatory if the Court determines that a respondent acted in bad faith by voluntarily providing public records only after a relator sought mandamus. R.C. 149.43(C)(a)(iii). Under either subsection, the costs award is “remedial and not punitive.” R.C. 149.43(C)(3)(a)(i); R.C. 149.43(C)(3)(b)(iii).

Respondents made certain records available to Officer Pool months after he sought mandamus. This belated partial compliance requires a mandatory costs award under subsection (iii). And as detailed above, Respondents have not complied with their obligations to provide records. The Court should issue the writ and order the corresponding costs under subsection (i).

III. The Court should award Officer Pool his reasonable attorneys’ fees.

Under R.C. 149.43(C)(3)(b)(i)–(iii), the Court may award attorneys’ fees to the relator for any of the following reasons: (1) failure to timely respond affirmatively or negatively to the request; (2) promising to provide copies of public records within a specified period then failing to do so; and (3) acting in bad faith by making requested records available only after the requester sought mandamus relief. The Court need not issue a writ of mandamus to award attorney fees. *State ex rel. Cincinnati Enquirer v. City of Cincinnati*, 157 Ohio St.3d 290, 2019-Ohio-3876, 135 N.E.3d 772, ¶ 12.

As with statutory damages, an award of attorney fees is remedial, not punitive. R.C. 149.43(C)(4)(a). The award “shall not exceed the total of the reasonable attorney’s fees incurred before the public record was made available to the relator” and “fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.” R.C. 149.43(C)(4)(b)–(c); *State ex rel. Miller v. Brady*, 123 Ohio St.3d 255, 2009-Ohio-4942, 915, N.E. 2d 1183, ¶ 19. *See also State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, ¶¶ 49-51 (awarding attorney fees because public office failed to respond to request); *State ex rel. Braxton v. Nichols*, 8th Dist. Cuyahoga Nos. 93653, 93654, 93655, 2010-Ohio-3193, ¶ 13 (finding award of attorney fees “mandatory” when court issued writ of mandamus); *Cleveland Assn. of Rescue Employees/ILA Local 1975 v. City of Cleveland*, 8th Dist. Cuyahoga No. 106783, 2018-Ohio-4602, ¶¶ 4, 19 (finding that request that went unanswered until mandamus action filed, the public office’s two-month delay in responding to part of the request, and a five-month delay to answer the entire request were unreasonable and awarded attorney fees).

Here, attorney fees are appropriate under R.C. 149.43(C)(3)(b)(i), (ii), and (iii). Subsection (i) allows the Court to award attorney fees solely based on a respondent’s unreasonable delay in “respond[ing] affirmatively or negatively” to the request. Here, Respondents unreasonably delayed in the following respects:

- Respondents’ delay of more than six months to produce the Division of Police manual was unreasonable;

- Respondents' delay of more than six months to issue a written denial of Item No. 7 of the request (which sought the Face-in-Hole records the Chief of Police created and posted or distributed at the Division of Police) was unreasonable;
- Respondents' delay of more than eight months to produce any of the Face-in-Hole records was unreasonable;
- After almost 13 months, Respondents have still demonstrably failed to fully respond to Item. No. 9 of the request, which sought memoranda or directives issued by the Chief of Police;
- After almost 13 months, Respondents have still demonstrably failed to fully respond to Item. No. 7 of the request, which sought the Face-in-Holes the Chief of Police created and posted or distributed at the Division of Police.

Attorney fees are also appropriate under R.C. 149.43(C)(3)(b)(ii) because Respondents' counsel twice promised to provide all records by a date certain and failed to fulfill both promises. JSUF, ¶¶ 12–22, 38.

Although the Court need not reach the determination of whether to award attorney fees under R.C. 149.43(C)(3)(b)(iii) since fees are merited under the prior two subsections, the evidence supports awarding attorney fees based on Respondents acting in bad faith by making some of the records available for the first time after Officer Pool filed the Petition. There exists no logical explanation for Respondents' failure to provide, e.g., the Division of Police Manual, before Relator filed his petition on November 11, 2021.

Likewise, Respondents' unexplained production of Chief Campo's emails, purportedly in response to the request for Face-in-Hole images, for which the email attachments had been conspicuously "stripped" is evidence of bad faith. The fact that Sheffield Lake's email system had a setting that would prevent Chief Campo's email

attachments from being saved along with his sent emails—despite the foreseeable risk of violating standard records-retention requirements—demonstrates the City’s willingness to be reckless with records retention for the sake of turning a blind eye to Chief Campo’s misconduct.

The Court shall not award attorney fees if it determines *both* of the following:

- (1) “[B]ased on the ordinary application of statutory law and case law as it existed at the time of the conduct...of the public office...that allegedly constitutes a failure to comply with an obligation” under R.C. 149.43(B), “a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct... did not constitute a failure to comply with an obligation” of R.C. 149.43(B);
- (2) “That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct ... of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.”

R.C. 149.43(C)(3)(c)(i)–(ii).

Neither of the elements for the exception to awarding attorney fees apply. A well-informed public official using an “ordinary application of statutory law and case law” as of July 30, 2021 would have produced all memoranda or directives and would have produced all “Face in Hole” images Chief Campo posted to official bulletin boards. No well-informed public official would think denying Officer Pool’s request in these ways would serve public policy. R.C. 149.43(C)(3)(c). Respondents’ denial and subsequent piecemeal productions of responsive records while this mandamus action has been

pending served only to delay appropriate scrutiny of the extent of Mr. Campo's egregious misconduct as the police chief.

PRAYER FOR RELIEF

Officer Keith Pool respectfully asks the Court to enter a peremptory writ of mandamus (1) ordering Respondents to produce all records responsive to Item 7 of his public-records request; (2) ordering Respondents to produce all records responsive to Item 9 of his public-records request; and (3) awarding statutory damages, court costs, and attorneys' fees.

Given Respondents' apparent difficulty in extracting image files from the former police chief's computer, Relator asks that the Court order Respondents to provide a copy of the computer and/or printer hard drive for Relator to inspect to obtain records responsive to Item 7.

Dated: August 26, 2022

Respectfully submitted,

/s/ Ashlie Case Sletvold

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CERTIFICATE OF SERVICE

I certify that on August 26, 2022, I served this document via email to counsel for Respondents at jclimer@mrrlaw.com and aherman@mrrlaw.com shortly after filing it with the Court's e-filing system.

/s/ Ashlie Case Sletvold
Ashlie Case Sletvold
Counsel for Relator Keith Pool