

**In The  
Supreme Court of Ohio**

**STATE EX REL. ANGEL M. LUCAS,**

:

:

*Relator,*

: Case No. 2023-1402

:

v.

: Original Action in Mandamus

:

**OHIO STATE HIGHWAY PATROL VEHICLE  
INSPECTION, et al.,**

:

:

*Respondents.*

:

---

**MOTION TO DISMISS OF RESPONDENT OHIO STATE HIGHWAY PATROL**

---

ANGEL M. LUCAS  
4104 Germantown Pike,  
Dayton, OH, 45418

*Relator, Pro Se*

Matthew Loesch  
Assistant Prosecutor  
2214 Vinton Ave.,  
Portsmouth, OH 45662

*Respondent*

Steven L. Mowery  
Municipal Court Judge  
728 2<sup>nd</sup> St.,  
Portsmouth, OH 45662

*Respondent*

Damon Roberts  
Scioto County Jail  
1025 16<sup>th</sup> Street  
Portsmouth, OH 45662

*Respondent*

DAVE YOST  
Ohio Attorney General

ELIZABETH H. SMITH (0076701)\*  
*\*Counsel of Record*

PHILLIP T. KELLY (0102198)  
Assistant Attorneys General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: 614- 466-2872 | Fax: 614-728-7592  
Elizabeth.Smith@OhioAGO.gov  
Phillip.Kelly@OhioAGO.gov

*Counsel for Respondent Ohio State  
Highway Patrol*

**In The  
Supreme Court of Ohio**

<b>STATE EX REL. ANGEL M. LUCAS,</b>	:	
	:	
<i>Relator,</i>	:	Case No. 2023-1402
	:	
v.	:	Original Action in Mandamus
	:	
<b>OHIO STATE HIGHWAY PATROL VEHICLE INSPECTION, et al.,</b>	:	
	:	
<i>Respondents.</i>	:	

---

**MOTION TO DISMISS OF RESPONDENT OHIO STATE HIGHWAY PATROL**

---

Pursuant to S.Ct.Prac.R. 12.02(B), S.Ct.Prac.R. 12.04, and Civ.R. 12(B)(6), Respondent Ohio State Highway Patrol hereby moves this Court to dismiss Relator's Complaint for Writ of Mandamus. A memorandum in support is attached.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

/s/ Elizabeth H. Smith

ELIZABETH H. SMITH (0076701)\*

*\*Counsel of Record*

PHILLIP T. KELLY (0102198)  
Assistant Attorneys General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: (614) 466-2872  
Fax: (614) 728-7592  
Elizabeth.Smith@OhioAGO.gov  
Phillip.Kelly@OhioAGO.gov

*Counsel for Respondent Ohio State Highway Patrol*

## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION**

Relator Angel Lucas' public records mandamus action against the Ohio State Highway Patrol<sup>1</sup> necessarily fails. As an initial matter, Relator has not made a proper public record request to the Ohio State Highway Patrol, pursuant to 149.43(B); instead Relator issued a subpoena that was quashed by the trial court. Even if Relator had submitted a proper public records request, there is no evidence, nor even any allegation, that Relator complied with R.C. 149.43(B)(8), which is a necessary prerequisite in this case. Moreover, Relator's affidavit is fatally defective because it fails to satisfy S.Ct.Prac.R. 12.02(B)(1) and (2). For these reasons, Relator's Complaint should be dismissed.

### **II. FACTUAL BACKGROUND**

Relator Angel Lucas is currently incarcerated in Dayton Correctional Institution. Compl. at ¶ 1. During the course of her criminal proceedings, Relator issued multiple subpoenas to the Ohio State Highway Patrol. *State of Ohio v. Angel M. Lucas*, 22CR000652. In her Complaint, Relator specifically references a subpoena she issued to the Ohio State Highway Patrol sometime before February 13, 2023. Compl., Attachment. Relator alleges that the subpoena requested "all video clips (kick back clips and no kick ack clips) from the Trooper's body camera devices, [and] dash camera devices." *Id.* In the underlying criminal proceeding, the State moved to quash that

---

<sup>1</sup> The Complaint denotes Respondent as "Ohio State Highway Patrol Vehicle Inspection" which is not separate legal entity (or even a known internal unit of the Ohio State Highway Patrol or Department of Public Safety). Since public records requests to the Ohio State Highway Patrol and/or Department of Public Safety would be handled by central records, the appropriate Respondent is Ohio State Highway Patrol. Respondent also notes that while the caption only identifies the Ohio State Highway Patrol and service of summons was issue only to same, the body of the Complaint purports to identify Trooper Nicholas Lewis and Matthew Lloyd as Defendants. Compl. at ¶ 2. Respondent notes that these Troopers have not received service or have been properly made parties to this case.

subpoena and the trial court granted that motion to quash stating “The Court after review of the motion filed and the arguments of the State of Ohio and the Defendant, Angel Marie Lucas, finds the State of Ohio’s Memo Contra/Motion to Quash the Subpoena on body camera footage well taken. Therefore, the Defendant’s subpoena for body camera footage from the Ohio State Highway Patrol will be quashed.” *See* J.E. dated February 14, 2023 *State of Ohio v. Angel M. Lucas*, 22CR000652.<sup>2</sup>

Relator now brings this mandamus action claiming that Respondents have violated the Public Records Act in failing to produce certain records. Relator alleges that on “August 16, 2023, the relator requested the defendant(s) to make available for inspection and copying true records relating to the arrest, trial, and conviction of the relator, in accordance with ORC Ann sec. 149.43.” Compl. at 3. Importantly, the Complaint ***does not*** specify which of the multiple Respondent(s) Relator asserts she made a public records request upon. The Complaint is devoid of any attachments which indicate that Relator specifically made a public records request to the Ohio State Highway Patrol. In fact, all Relators averments with respect to the Ohio State Highway Patrol, including those in her sworn “attachment” relate to subpoenas.

Relator concedes that she received some of the documents requested from other parties. (i.e. received non-working digital material from Respondent Matthew Loesch. *Id.* at pg. 3. She claims the video materials were “edited without kickback clips.” *Id.*)

---

<sup>2</sup> The Supreme Court has held that a court may take judicial notice of public court records available on the internet. *State ex rel. Everhart v. McIntosh*, 115 Ohio St. 3d 195, 2007-Ohio-4798, ¶ 8, 874 N.E.2d 516; *State ex rel. Harsh v. Mohr*, 10th Dist. No. 13AP-403, 2013-Ohio-4218.

### **III. LAW AND ANALYSIS**

#### **A. Standard of Review**

Civ. R. 12(B)(6) provides for dismissal based on failure to state a claim. A motion to dismiss for failure to state a claim upon which a court can grant relief challenges the sufficiency of the complaint itself. *Volbers-Klarich v. Middletown Mgt. Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. When considering a Civ. R. 12(B)(6) motion, a court must accept the factual allegations of the complaint as true and make all reasonable inferences in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). However, a court “need not presume the truth of conclusions unsupported by factual allegations.” *Welch v. Finlay Fine Jewelry Corp.*, 10th Dist. Franklin No. 01AP-508, 2002 Ohio App. LEXIS 503, at \*5 (Feb. 12, 2002); *see also BAC Home Loans Servicing, LP v. Kolenich*, 194 Ohio App.3d 777, 2011-Ohio-3345, 958 N.E.2d 194, ¶ 37 (12th Dist.) (legal conclusions unsupported by factual allegations are insufficient to withstand a motion to dismiss for failure to state a claim). When a plaintiff fails to meet her burden, dismissal under Civ. R. 12(B)(6) is required.

In the context of the Public Records Act, although it “is accorded liberal construction in favor of access to public records, ‘the relator must still establish entitlement to the requested extraordinary relief by clear and convincing evidence.’” *State ex rel. Cincinnati Enquirer v. Deters*, 148 Ohio St. 3d 595, 2016-Ohio-8195, 71 N.E.3d 1076, ¶ 19, quoting *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 133 Ohio St.3d 139, 2012-Ohio-4246, 976 N.E.2d 877, ¶ 16. Clear and convincing evidence is a degree of proof that is more than a ‘preponderance of evidence,’ but less than ‘beyond a reasonable doubt.’ *Id.*

**B. Relator fails to state a valid mandamus claim for public records.**

To be entitled to a writ of mandamus, “a relator generally must establish by clear and convincing evidence (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Ware v. Parikh*, 2023-Ohio-2536, ¶ 13, citing *State ex rel. Love v. O'Donnell*, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3. Mandamus is an appropriate remedy to bring an action under the Public Records Act. *State ex rel. Ware* at P13.

The Public Records Act “allows suit only by ‘a person allegedly \* \* \* aggrieved’ by the failure of a public office ‘to promptly prepare a public record and to make it available.’” *State ex rel. Cincinnati Enquirer* at ¶ 20, quoting R.C. 149.43(C)(1). In order to be aggrieved, it is axiomatic that “one must first request records from the public office.” *Id.*, citing *McCaffrey* at ¶ 20, citing *State ex rel. Taxpayers Coalition v. Lakewood*, 86 Ohio St.3d 385, 390, 1999 Ohio 114, 715 N.E.2d 179 (1999) (“R.C. 149.43(C) requires a prior request as a prerequisite to a mandamus action”) and *Strothers v. Norton*, 131 Ohio St.3d 359, 2012-Ohio-1007, 965 N.E.2d 282, ¶ 14.

Here, Relator never submitted a public records request to the Ohio State Highway Patrol. Instead, Relator filed subpoenas in her criminal proceedings. At most, Relator alleges she submitted a public records request, on August 16, 2023, to “defendant(s) to make available for inspection and copying true records relating to the arrest, trial, and conviction of the relator, in accordance with ORC Ann sec. 149.43.” Compl. at 3. However, this is not enough to state a claim against Ohio State Highway Patrol. Based on this allegation alone, it is entirely unclear which Respondent of the several named she purportedly sent a public records request to. She does not attach any supporting affidavits or exhibits that indicate she sent a public records request to Ohio State Highway Patrol. In fact, Relator’s faulty affidavit and exhibit (letter from Sheriff David

Thoroughman) merely reference subpoenas and not public records requests. Therefore, Relator fails to state a claim as to Respondent as there is nothing which indicates she made a public records request to the Ohio State Highway Patrol.

**C. Even if Relator did make a proper request on the Ohio State Highway Patrol, she is a prison inmate and must follow certain statutorily-mandated procedure.**

Even if Relator had established she made a proper public records request, her mandamus claim would fail. Assuming that Relator filed a proper public records request to the Ohio State Highway Patrol (which she did not), there is no evidence or allegations that Relator followed the statutorily-mandated procedure required of prison inmates before such request is made. The Public Records Act requires that, for a prison inmate to receive records related to a criminal investigation or prosecution, the prisoner must first have the judge determine “that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.” R.C. 149.43(B)(8). “In the absence of the necessary finding from the sentencing judge, an inmate is not entitled to the requested records.” *State ex rel. Ellis v. Cleveland Police Forensic Lab.*, 167 Ohio St. 3d 193, 2021-Ohio-4487, 190 N.E.3d 605, ¶ 13, citing *State ex rel. Fernbach v. Brush*, 133 Ohio St.3d 151, 2012-Ohio-4214, 976 N.E.2d 889, ¶ 2. *See also State ex rel. Adkins v. Cantrell*, 2023-Ohio-1323, P27 (Because Adkins has not shown that he complied with R.C. 149.43(B)(8), he has failed to show by clear and convincing evidence his entitlement to relief.); *State ex rel. Russell v. O'Shaughnessy*, 2023-Ohio-3949, ¶ 9 (Because relator did not comply with R.C. 149.43(B)(8), he cannot establish a clear legal right to the relief requested and that respondent had a clear legal duty to provide it. Therefore, relator is not entitled to extraordinary relief in mandamus.)

Here, Relator is a prisoner incarcerated at Dayton Correctional Institution. Compl. at ¶ 1. Moreover, it is clear, based on her allegations, that Relator is seeking records pertaining to her criminal investigation and prosecution—she alleges she submitted a public records request concerning the “arrest, trial, and conviction of the relator.” Compl. at ¶ 3. Because Relator is an inmate and she is requesting records concerning her criminal prosecution, R.C. 149.42(B)(8) applies. Relator was first required to seek a finding from her sentencing judge before being entitled to any records, but there is no evidence or allegations that this occurred.

**D. Relator’s affidavit is fatally defective.**

Finally, Relators’ affidavit is defective because it does not satisfy the requirements under S.Ct.Prac.R. 12.02(B)(1) and (2). The Supreme Court Rules of Practice require a complaint to be accompanied by an affidavit that specifies the complaint was “made on personal knowledge” and shows “affirmatively that the affiant is competent to testify on all matters stated in the affidavit.” S.Ct.Prac.R. 12.01(B)(1)-(2). This Court has “routinely dismissed original actions, other than habeas corpus, that were not supported by an affidavit expressly stating that the facts in the complaint were based on the affiant’s personal knowledge.” *State ex rel. Esarco v. Youngstown City Council*, 116 Ohio St. 3d 131, 2007-Ohio-5699, 876 N.E.2d 953, ¶ 14, quoting *State ex rel. Hackworth v. Hughes*, 97 Ohio St.3d 110, 2002 Ohio 5334, 776 N.E.2d 1050, ¶ 24.

Here, Relator attached a document at the end of the complaint titled “Attachment”. *See* Compl., Attachment, pgs. 3-4. Although the document is notarized, it does not specify that the complaint was made on Relator’s personal knowledge, nor does it affirmatively state the Relator is competent to testify on all matters. It simply fails to satisfy the standards for a complaint under S.Ct.Prac.R. 12.01(B)(1)-(2). Accordingly, Relator’s Complaint may be dismissed for this defect alone.

#### IV. CONCLUSION

For the foregoing reasons, Respondent Ohio State Highway Patrol respectfully requests that Relator's Complaint be dismissed against it.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

*/s/ Elizabeth H. Smith*

---

ELIZABETH H. SMITH (0076701)\*

*\*Counsel of Record*

PHILLIP T. KELLY (0102198)

Assistant Attorneys General

Constitutional Offices Section

30 East Broad Street, 16th Floor

Columbus, Ohio 43215

Tel: (614) 466-2872

Fax: (614) 728-7592

Elizabeth.Smith@OhioAGO.gov

Phillip.Kelly@OhioAGO.gov

*Counsel for Respondent Ohio State Highway Patrol*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed electronically with the court and sent via first class mail on November 27, 2023, to the following:

Angel M. Lucas A110704  
Dayton Correctional Institution  
4104 Germantown Pike  
Dayton, Ohio 45418

*Relator*

Matthew Loesch, Assistant Prosecutor  
2214 Vinton Avenue  
Portsmouth, Ohio 45662

*Respondent*

Judge Steven L. Mowery  
728 Second Street  
Portsmouth, Ohio 45662

Captain Damon Roberts  
Scioto County Jail  
1025 16<sup>th</sup> Street  
Portsmouth, Ohio 45662

*Respondent*

/s/ Elizabeth H. Smith  
ELIZABETH H. SMITH (0076701)  
Assistant Attorney General