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SLIP OPINION NO. 2023-OHIO-2536

THE STATE EX REL. WARE, APPELLANT, v. PARIKH, CLERK, APPELLEE.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Ware v. Parikh*, Slip Opinion No. 2023-Ohio-2536.]

Mandamus—Public-records requests—Appellant received the records he is entitled to seven business days after mandamus filed—Multiple communications requesting public records construed as one public-records request—Court of appeals’ judgment denying writ affirmed and \$700 in statutory damages awarded.

(No. 2022-0543—Submitted January 10, 2023—Decided July 26, 2023.)

APPEAL from the Court of Appeals for Hamilton County, No. C-190563.

Per Curiam.

{¶ 1} Kimani Ware appeals the judgment of the First District Court of Appeals denying his petition for a writ of mandamus against the Hamilton County clerk of courts to compel the production of public records and for statutory

damages. At the time Ware filed his petition, Aftab Pureval was the Hamilton County clerk of courts. The current clerk of courts is Pavan Parikh, who is automatically substituted as the appellee in this action. *See* S.Ct.Prac.R. 4.06(B).

{¶ 2} Ware also appeals the court’s judgment denying his motions for default judgment against the clerk and for summary judgment. We affirm the court of appeals’ judgment and award Ware \$700 in statutory damages.

I. Background

{¶ 3} Ware is an inmate at Richland Correctional Institution. On January 23, 2019, while incarcerated at Trumbull Correctional Institution, he sent public-records requests to the clerk by certified mail.

- “Public Records Request # 1” asked for “a copy of the Hamilton County clerk of courts office: (1) Records retention schedule [and] (2) Public records policy.”
- “Public Records Request # 2” asked for “a copy of the Hamilton County clerk of courts office: Table of organization of employees and/or roster listing of the Hamilton County clerk of courts office.”
- “Public Records Request # 3” asked for “a copy of the Hamilton County clerk of courts office: (1) Application of one-time disposal for obsolete records (RC-1), for year 2018.”
- “Public Records Request # 4” asked for “a copy of the Hamilton County clerk of courts office: (1) Employee’s manual and/or employee’s handbook [and] (2) Certificate of records disposal (RC-3) for employee time records, leave forms.”
- “Public Records Request # 5” asked for “a copy of the Hamilton County clerk of courts office: (1) Acknowledgement receipt, of the employee who has custody and/or control of the Hamilton County clerk of courts office

records, and received and signed an acknowledgment receipt that received a copy of the Hamilton County clerk of courts public records policy.”

- “Public Records Request # 6” asked for a copy of the personnel files of Richard Hofmann (who Ware indicates is a deputy clerk) and Aftab Pureval.
- “Public Records Request # 7” asked for a copy of the oath of office of Richard Hofmann and Aftab Pureval.
- “Public Records Request # 8” asked for “a copy of the Hamilton County clerk of courts: (1) Certificate of election of Aftab Pureval [and] (2) A copy of all oath[s] of office of each deputy clerk of the Hamilton County clerk of courts office.”
- “Public Records Request # 9” asked for a copy of all time-off requests by Richard Hofmann and Aftab Pureval from December 1, 2018, through January 23, 2019.
- “Public Records Request # 10” asked for copies of the indictment, docket sheet, bill of particulars, and criminal complaint in case No. B-0107629.

All ten requests indicated that they were “Public Records Request[s] pursuant to R.C. 149.43.”

{¶ 4} The clerk responded separately to each request, but each response was a form letter denying the request, stating, “Your public records request is subject to approval from the Judge who sentenced you (or their successor) according to Section 149.43(B)(8) of the Ohio Revised Code.” On February 22, 2019, Ware wrote to the clerk’s office, arguing that his requests were not subject to R.C. 149.43(B)(8). The clerk’s office responded by sending the same form letter.

II. Procedural history

{¶ 5} On October 1, 2019, Ware filed a petition for a writ of mandamus in the First District Court of Appeals. He filed an amended petition shortly thereafter but continued to assert the same claims. On October 10, the clerk sent documents

in response to eight of Ware's requests. The clerk indicated that with respect to the fifth request, there were no records that matched the description Ware had provided. And as to the tenth request, the clerk continued to assert that Ware was required to comply with R.C. 149.43(B)(8).

{¶ 6} The clerk filed a motion to dismiss, arguing that Ware had failed to attach an affidavit listing his prior civil actions, as required by R.C. 2969.25(A). Ware filed a motion for default judgment on the ground that the clerk had not filed a response to the petition within the time allowed by the civil rules. After receiving the clerk's motion to dismiss, Ware filed a brief in opposition and a motion for summary judgment.

{¶ 7} In January 2020, the First District granted the clerk's motion to dismiss, finding that Ware had not complied with the affidavit requirement in R.C. 2969.25(A). *State ex rel. Ware v. Pureval*, 1st Dist. Hamilton No. C-190563 (Jan. 7, 2020). The First District denied all other pending motions as moot.

{¶ 8} On appeal, we found evidence that Ware may have submitted the required affidavit and that the affidavit had not been included in the court file due to a clerical error. *State ex rel. Ware v. Pureval*, 160 Ohio St.3d 387, 2020-Ohio-4024, 157 N.E.3d 714, ¶ 7. We reversed the First District's judgment dismissing the case and remanded the matter for the court of appeals to determine whether a proper affidavit had in fact been presented for filing. *Id.* at ¶ 8.

{¶ 9} On remand, the First District determined that Ware had filed a complying affidavit and therefore permitted the case to proceed. Ware then filed a new motion for default judgment, again asserting that the clerk had failed to file an answer or responsive pleading within the time permitted by rule. Ware did not renew his summary-judgment motion.

{¶ 10} In March 2022, the First District denied Ware's motion for default judgment and his petition for a writ of mandamus. Ware appealed.

III. Legal analysis

A. Denial of Ware’s motion for default judgment and petition for writ of mandamus

{¶ 11} In his first proposition of law, Ware contends that the First District should have granted his motion for default judgment against the clerk. Because Ware has not challenged the sufficiency of the clerk’s responses to eight of his public-records requests, his mandamus claims with respect to those eight requests are moot. *See State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, 950 N.E.2d 952, ¶ 22 (generally, a public-records mandamus claim becomes moot when the records custodian provides the requested documents). Likewise, his motion for default judgment as to those eight requests is moot. The sole remaining issue with respect to the mandamus claims is whether the court of appeals should have granted a default judgment as to the fifth and tenth requests.

{¶ 12} A court may, upon motion, enter a default judgment in a mandamus action against a respondent who has failed to timely plead in response to an affirmative pleading. Civ.R. 55(A); *State ex rel. Davidson v. Beathard*, 165 Ohio St.3d 558, 2021-Ohio-3125, 180 N.E.3d 1105, ¶ 15. However, Civ.R. 55(D) provides that “[n]o judgment by default shall be entered against the state, a political subdivision, or officer in his representative capacity or agency of either unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.” The First District did not dispute Ware’s contention that the clerk had failed to timely answer or plead in the case. But citing Civ.R. 55(D), the court of appeals held: “Because [Ware] failed to establish that he had a clear legal right to compel [the clerk] to produce the requested documents, he is not entitled to a writ of mandamus or a default judgment.” 1st Dist. Hamilton No. C-190563 (Mar. 29, 2022). In other words, the question of Ware’s right to a default judgment is inextricably bound up with the merits of his mandamus claim.

{¶ 13} We review a decision denying a writ of mandamus as if the matter had originally been filed in this court. *State ex rel. Matheis v. Russo*, 50 Ohio St.3d 204,

205, 553 N.E.2d 653 (1990). 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. Love v. O'Donnell*, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3. Mandamus is an appropriate remedy to compel compliance with the Public Records Act, R.C. 149.43, and a relator need not demonstrate the absence of an adequate remedy in the ordinary course of the law. *State ex rel. Cincinnati Enquirer v. Pike Cty. Gen. Health Dist.*, 154 Ohio St.3d 297, 2018-Ohio-3721, 114 N.E.3d 152, ¶ 12; *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, ¶ 14-15.

{¶ 14} As to Ware's fifth public-records request, to be entitled to a writ of mandamus, Ware must show by clear and convincing evidence that he requested a record that exists and is maintained by the clerk. *See State ex rel. Gooden v. Kagel*, 138 Ohio St.3d 343, 2014-Ohio-869, 6 N.E.3d 1170, ¶ 8. The First District properly denied the mandamus claim as to Ware's fifth request because Ware did not present evidence showing that the clerk has any records matching the description provided.

{¶ 15} Ware's tenth public-records request sought the indictment, docket sheet, bill of particulars, and criminal complaint in case No. B-0107629. That is the Hamilton County Common Pleas Court case number for a criminal case against Dorie Terrell. The First District correctly held that this request was subject to R.C. 149.43(B)(8).

{¶ 16} R.C. 149.43(B)(8) imposes restrictions on an inmate's ability of an inmate to inspect or obtain certain public records.

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction * * * to inspect or to obtain a copy of any public

record concerning a criminal investigation or prosecution * * * unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds 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 by the sentencing judge, an inmate is not entitled to the requested records. *State ex rel. Fernbach v. Brush*, 133 Ohio St.3d 151, 2012-Ohio-4214, 976 N.E.2d 889, ¶ 1-2. Because the records Ware requested—an indictment, a criminal docket sheet, a bill of particulars, and a criminal complaint—clearly concern a criminal prosecution, the clerk had no duty to give them to Ware without the sentencing judge's approval. *See State ex rel. Ware v. Giavasis*, 160 Ohio St.3d 383, 2020-Ohio-3700, 157 N.E.3d 710, ¶ 6.

{¶ 17} In sum, the First District correctly denied the writ as to Ware's fifth and tenth requests, and the other eight requests are moot. And because Ware was not entitled to a writ of mandamus, the First District did not err when it denied his new motion for default judgment.

B. Statutory damages

{¶ 18} A person requesting public records “shall” be entitled to an award of statutory damages “if a court determines that the public office or the person responsible for the public records failed to comply with an obligation in accordance with [R.C. 149.43(B)].” R.C. 149.43(C)(2). Statutory damages are calculated at the rate of \$100 for every business day the public office or person responsible for the requested public records fails to comply with an obligation under R.C. 149.43(B), starting from the date of the filing of a mandamus action, with a

maximum award of \$1,000. R.C. 149.43(C)(2). Ware requested a total award of \$10,000; that is, he requested the \$1,000 maximum for each of his ten requests.

{¶ 19} Here, the clerk initially responded to all ten of Ware’s requests but erroneously denied eight of them. Because the clerk did not fail to comply with an obligation under R.C. 149.43(B) with respect to the fifth and tenth requests, Ware is entitled to at most an award of \$8,000.

{¶ 20} Ware filed this mandamus action on October 1, 2019. The clerk met his obligations under the statute when he provided the records responsive to Ware’s requests on October 10, meaning the clerk complied with his obligation seven business days after the mandamus complaint was filed. Ware’s maximum potential statutory damages are thus \$700 per request, or a total of \$5,600. Before awarding that amount, however, we consider some threshold questions.

1. Are the requests governed by the Public Records Act or the Rules of Superintendence?

{¶ 21} The clerk has consistently argued that Ware’s petition is subject to dismissal because Ware allegedly sought relief under the wrong authority. Ware expressly invoked R.C. 149.43, the Public Records Act, in all ten of his requests. The header atop his petition indicated that he was seeking a writ of mandamus “pursuant to * * * R.C. 149.43.” And the petition repeatedly invoked the Public Records Act, not the Rules of Superintendence, as the source of the duty Ware sought to enforce. The First District denied the writ with regard to nine of Ware’s requests because it concluded that they “concern the operations of the office of the Hamilton County Clerk of Courts” and therefore constitute administrative records governed by Sup.R. 44(G)(1). 1st Dist. Hamilton No. C-190563 (Mar. 29, 2022).

{¶ 22} In this case, all but one of Ware’s requests sought records pertaining to the administration of the clerk’s office: the records-retention schedule and public-records policy (Request # 1), the table of organization and/or roster of employees (Request # 2), documents relating to the disposal of records (Requests

3 and # 4), the employee handbook (Request # 4), a clerk employee’s “acknowledgement receipt” (Request # 5), employee personnel files (Request # 6), the clerk’s and deputy clerks’ oaths of office (Requests # 7 and # 8), Pureval’s certificate of election (Request # 8), and employee time-off requests (Request # 9).

{¶ 23} This court has previously held that requests for records documenting the operations of the clerk of court’s office are governed by the Public Records Act. *State ex rel. Ware v. Kurt*, 169 Ohio St.3d 223, 2022-Ohio-1627, 203 N.E.3d 665, ¶ 15. Therefore, Ware potentially qualifies for an award of statutory damages.¹

2. *Is Ware entitled to a single award of damages or multiple awards?*

{¶ 24} R.C. 149.43(C)(2) permits a court to award statutory damages to a requester who transmits a request in writing by one of the listed methods. The requester is entitled to statutory damages “if a court determines that the public office or the person responsible for public records *failed to comply with an obligation* in accordance with [R.C. 149.43(B)].” (Emphasis added.) R.C. 149.43(C)(2). The statute further outlines how damages are to be calculated. It fixes the amount of damages at “one hundred dollars for *each business day during which* the public office or person responsible for the requested public records *failed to comply with an obligation* in accordance with [R.C. 149.43(B)].” (Emphasis added.) *Id.* Damages are capped at \$1,000. *Id.*

{¶ 25} The statutory text ties the award of damages to the public office’s violation of an obligation under R.C. 149.43(B), and it bases the amount of the award on the number of days that the violation occurred. Thus, when calculating the amount of statutory damages to which a requester is entitled, the court must determine the number of days during which the public office failed to perform a duty imposed by R.C. 149.43(B), starting with the day the mandamus action was

1. To qualify for statutory damages under the Public Records Act, a requester must transmit the request by “hand delivery, electronic submission, or certified mail.” R.C. 149.43(C)(2). The clerk does not dispute that Ware served his requests by certified mail.

filed. The focus is not on the number of obligations the office failed to comply with, but on the number of *days during which* it failed to comply with any of its statutory obligations with respect to a public-records request. *See State ex rel. Myers v. Meyers*, 169 Ohio St.3d. 536, 2022-Ohio-1915, 207 N.E.3d 579, ¶ 58 (“A requester who has made one public-records request may typically recover only \$100 for each business day that a public office fails to comply with its obligation, even when the requester identifies multiple violations of R.C. 149.43(B) for a particular business day”).

{¶ 26} In this case, the clerk failed to comply with his obligation to make available to Ware “all public records responsive to the request,” R.C. 149.43(B)(1). For a period of seven business days after the mandamus complaint was filed, the clerk wrongfully denied Ware’s request for eight categories of records.

{¶ 27} Ware’s claim for damages is premised on the idea that he is entitled to a \$700 damages award for each category of records requested, simply because he divided his request into separate envelopes. R.C. 149.43(C)(2) provides that if a requester “transmits a written request by hand delivery, electronic submission, or certified mail,” then the requester is *eligible* for an award of damages. Regardless of whether a requester asks for five categories of documents in a single certified-mail envelope or divides his communication into five separate envelopes, the request will still have been *transmitted* by certified mail. The statute does not calculate damages based on the number of transmissions. Instead, damages are based on the number of business days that the public office failed to comply with a statutory obligation. And because the clerk violated his duty to make available to Ware “all public records responsive to *the request*,” (emphasis added) R.C. 149.43(B)(1), we must also determine the number of requests that Ware made during that time.

{¶ 28} In *State ex rel. Ware v. Akron*, 164 Ohio St.3d 557, 2021-Ohio-624, 174 N.E.3d 724, Ware sent two letters asking for nine categories of records. The

letters were sent at the same time to the same office. We construed these two letters as a single records request and therefore ordered a single damages award. We explained, “R.C. 149.43(C)(1) ‘does not permit stacking of statutory damages based on what is essentially the same records request.’ ” *Id.* at ¶ 22, quoting *State ex rel. Dehler v. Kelly*, 127 Ohio St.3d 309, 2010-Ohio-5724, 939 N.E.2d 828, ¶ 4. We therefore reasoned that “the fact that [Ware] spread his public-records requests across two letters does not automatically mean that each letter constitutes a separate request for purposes of calculating statutory damages.” *Id.* Noting that the letters had been submitted in the same envelope and that Ware had presented no legal argument to support his claim that the letters constituted separate requests, we concluded that he was entitled to only a single damages award.

{¶ 29} Subsequently, in *Myers*, 169 Ohio St.3d 536, 2022-Ohio-1915, 207 N.E.3d 579, we ordered multiple awards for multiple requests. While we emphasized that some requests were transmitted through separate emails, we also focused on the fact that they were submitted on different days in concluding that separate requests had been made. *Id.* at ¶ 59.

{¶ 30} In *State ex rel. Ware v. Wine*, 169 Ohio St.3d 791, 2022-Ohio-4472, 207 N.E.3d 807, Ware requested four different records by way of six prison kites. Although there were six transmissions in total, we found that Ware had made only four requests: two of the kites were duplicative of others sent on the same day to the same prison representative. Ware did not establish entitlement to mandamus relief with respect to one of the four requests, so this court denied his request for damages related to that request. As to the remaining three requests, we concluded that he was entitled to a separate damages award for each. *Id.* at ¶ 10-15. Significantly, each of those requests were sent on different days, concerned different records, and were sent to different records custodians. *Id.* at ¶ 2, 3, 5.

{¶ 31} We have never held that a requester who transmits a public-records request via multiple communications is entitled to separate damages awards for

each transmission. The communications requesting the eight records at issue were divided into eight separate envelopes. But the envelopes were sent on the same day, were submitted to the same office, and concerned the same general subject matter. As we have explained, the statutory-damages provision does not permit a “windfall,” *Dehler*, 127 Ohio St.3d 309, 2010-Ohio-5724, 939 N.E.2d 828, at ¶ 4. Instead, the statute makes clear that an “award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information.” R.C. 149.43(C)(2). Under the circumstances of this case, we construe Ware’s mailings as a single records request. We therefore conclude that Ware is entitled to only a single damages award.

{¶ 32} We award statutory damages of \$700.

C. Ware’s motion for summary judgment

{¶ 33} As previously noted, the First District denied Ware’s summary-judgment motion, along with all other pending motions, as moot when it dismissed the petition for failure to comply with R.C. 2969.25(A). In his second proposition of law, Ware argues that the court of appeals erred by failing, on remand, to consider his motion for summary judgment. He asks us to remand the case to the First District to consider the motion. We decline to do so because the issues raised in the motion for summary judgment are moot: Ware has prevailed on his claims to the extent the law allows. Remanding the case to the court of appeals for consideration of his motion would not yield a different result.

IV. Conclusion

{¶ 34} We affirm the judgment of the First District Court of Appeals and award Ware \$700 in statutory damages.

Judgment affirmed.

FISCHER, DEWINE, DONNELLY, STEWART, and BRUNNER, JJ., concur.

KENNEDY, C.J., concurs in part and concurs in judgment only in part, with an opinion.

DETERS, J., not participating.

KENNEDY, C.J., concurring in part and concurring in judgment only in part.

{¶ 35} I join the majority opinion insofar as it affirms the First District Court of Appeals’ judgment denying a writ of mandamus to appellant, Kimani Ware. And I agree with the majority’s conclusion that of Ware’s ten requests for public records, eight concerned records to which he was entitled. I also concur in the majority’s judgment limiting the award of statutory damages to \$700, but I come to that determination for a reason different from that of the majority. The majority awards statutory damages of \$700 because it “construe[s] * * * as a single records request” the eight requests made by Ware because they “were sent on the same day, were submitted to the same office, and concerned the same general subject matter.” Majority opinion, ¶ 31. I would limit Ware’s statutory damages to \$700 because the requests for the records he sought were contained in a single certified-mail transmission to appellee, the Hamilton County clerk of courts.

{¶ 36} A public-records requester is entitled to statutory damages if a court determines that (1) the person or public office responsible for the public records failed to comply with R.C. 149.43(B), (2) the request was transmitted by hand delivery, electronic submission, or, as here, by certified mail, and (3) the request fairly described the records sought. R.C. 149.43(C)(2). Damages are calculated at \$100 for each business day the requester is without the records after the complaint for a writ in mandamus is filed, with a maximum award of \$1,000. R.C. 149.43(C)(2).

{¶ 37} The majority holds, and I agree, that the clerk of courts violated R.C. 149.43(B) and that Ware complied with R.C. 149.43(C)(2). Seven business days after Ware filed his complaint seeking a writ of mandamus, the clerk of courts provided the records to which Ware was entitled. Therefore, under the plain,

unambiguous language of R.C. 149.43(C)(2), Ware is entitled to \$700 in statutory damages—\$100 for each day after filing his mandamus complaint during which the public office failed to provide the public records in violation of R.C. 149.43(B).

{¶ 38} As the majority opinion finds, Ware made eight legitimate public-records requests. A review of the record reveals that those requests were transmitted together in one certified-mail envelope to the clerk of courts:

- Each of the record requests contains a certificate of service indicating a certified-mail “receipt” number, but the receipt number on each of the certificates of service is the same.
- Ware’s complaint includes an exhibit containing a copy of his single certified-mail receipt.
- In the “Article addressed to” area of the receipt, under the address for the clerk of courts, is written “Attn: Ten Public Records Requests.”
- In his complaint, Ware mentions only a single receipt when he states: “A true and accurate copy of the certified mail Return Receipt is attached to Exhibit A.”

{¶ 39} The requests were not duplicative—they did not ask for the same record. Despite the evidence that the eight requests were not duplicative, the majority points to their sameness in limiting Ware to “only a single damages award” majority opinion at ¶ 31. In doing so, the majority concludes that the eight requests made by Ware “were sent on the same day, were submitted to the same office, and concerned the same general subject matter,” and it therefore “construe[s] Ware’s mailings as a single records request.” *Id.*

{¶ 40} When confronted with a case involving multiple public-records requests made by the same requester, this court has found the *transmission of the requests* controlling of our R.C. 149.43(C)(2) analysis. Until today, our caselaw has matched the statute.

{¶ 41} In *State ex rel. Ware v. Akron*, 164 Ohio St.3d 557, 2021-Ohio-624, 174 N.E.3d 724, Ware mailed two separate public-records requests to the Akron police department in the same certified-mail envelope. In one letter, Ware asked for copies of various police-department policies and a copy of the department’s employee roster. *Id.* at ¶ 2-3. In the second letter, he sought the personnel files of certain named employees. *Id.* Ware did not receive a response to either request before filing his petition for a writ of mandamus.

{¶ 42} This court did not grant the writ of mandamus, because the city responded to Ware’s public-records requests after he filed his petition, informing him how much copies of the requested records would cost. *Id.* at ¶ 6-8, 15. But it took the city nearly nine months to respond to Ware, so this court awarded Ware statutory damages. *Id.* at ¶ 18, 21. Ware requested a total award of \$2,000 in statutory damages—\$1,000 each for what he considered to be two separate requests. *Id.* at ¶ 22. But this court awarded him \$1,000 for a single request. *Id.* at ¶ 21. We looked at the number of transmissions to determine how many public-records requests were made for purposes of calculating statutory damages. Because both requests were transmitted in the same certified-mail envelope, we concluded that that transmission constituted one public-records request. *Id.* at ¶ 22.

{¶ 43} I agreed with that holding; Ware had transmitted one certified-mail envelope containing two requests. R.C. 149.43(C)(2) calls for an award of statutory damages when a requester “*transmits a written request* by hand delivery, electronic submission, or certified mail.” (Emphasis added.) How many transmissions were made is the key issue. And in *Akron*, Ware made only one transmission.

{¶ 44} In *State ex rel. Myers v. Meyers*, 169 Ohio St.3d 536, 2022-Ohio-1915, 207 N.E.3d 579, ¶ 59, Myers, on eight different dates, sent emails to the city of Chillicothe requesting incident reports for separate incidents that had occurred over the span of a few months in that city. One email contained two requests. *Id.*

Therefore, Myers submitted nine total requests that were transmitted by eight emails. *Id.*

{¶ 45} The city responded but held back certain reports on the ground they were confidential law-enforcement investigatory records. *Id.* at ¶ 67-70. This court granted a writ of mandamus to Myers and awarded him statutory damages for the public-records requests he made in each of the eight separate emails. *Id.* at ¶ 64-65. I agreed with that assessment because although Myers had sought more than one record in one of the emails, there was only one transmission containing those two requests, *id.* at ¶ 64. Therefore, Myers was limited to one award of statutory damages for that single email transmission and separate awards of statutory damages for the other requests.

{¶ 46} And in *State ex rel. Ware v. Wine*, 169 Ohio St.3d 791, 2022-Ohio-4472, 207 N.E.3d 807, ¶ 1-5, Ware made public-records requests by way of prison kites sent to three different prison officials on June 18, 21, and 22, 2021, requesting copies of various prison schedules. The officials did not produce the records Ware sought, telling him that they were posted and available to view in areas accessible by prison inmates. *Id.* at ¶ 10.

{¶ 47} This court granted Ware’s petition for a writ of mandamus, ordered the prison officials to produce the records, and awarded Ware \$3,000 in statutory damages—\$1,000 for each of the three kites he transmitted requesting the records. *Id.* at ¶ 13-15, 17. I agreed with the majority’s decision to grant the writ of mandamus in that case and to award Ware \$3,000 in statutory damages, but I would have awarded additional statutory damages for a fourth kite that Ware had sent requesting public records. *Id.* at ¶ 28-55 (Kennedy, J., concurring in part and dissenting in part).

{¶ 48} What can be gleaned from this caselaw is that *transmission* controls the amount of statutory damages to be awarded in an action filed under the Public Records Act. Without a transmission by hand delivery, certified mail, or electronic

means, statutory damages are not available. R.C. 149.43(C)(2). In *Akron*, two public-records requests were transmitted in one certified-mail envelope, and this court counted that transmission as one public-records request for purposes of awarding statutory damages. 164 Ohio St.3d 557, 2021-Ohio-624, 174 N.E.3d 724, at ¶ 22. In *Myers*, nine public-records requests were transmitted in eight separate emails, and this court counted the email transmission that sought two separate reports as one public-records request for purposes of awarding statutory damages. 169 Ohio St.3d 536, 2022-Ohio-1915, 207 N.E.3d 579, at ¶ 59. And in *Wine*, three public-records requests were transmitted by separate kites, and this court counted each kite as a separate transmission for purposes of awarding statutory damages. *Id.* at ¶ 1-5, 13-15. Those results are all consistent with awarding statutory damages based on the language of R.C. 149.43(C)(2) when a public-records requester “transmits a written request by [one of the statutory methods].”

{¶ 49} Now the majority is adding new elements to what constitutes a public-records request for purposes of awarding statutory damages under the Public Records Act. Here, the majority says that Ware’s eight public-records requests entitle him to an award of statutory damages for one public-records request because the envelopes containing the requests were sent on the same day, were submitted to the same office, and concerned the same general subject matter. But these qualifiers do not exist in R.C. 149.43(C)(2). These qualifiers have never existed in our caselaw either.

{¶ 50} When calculating statutory damages, the general content of the public-records request does not matter. In *Akron*, the requester sought police-department policies and an employee roster. *Id.* at ¶ 2. In *Myers*, the requester sought incident reports. *Id.* at ¶ 1. In *Wine*, Ware sought a variety of different prison records. 169 Ohio St.3d 791, 2022-Ohio-4472, 207 N.E.3d 807, at ¶ 2-5. The plain unambiguous language of the statute does not require an assessment of whether multiple requests “concerned the same general subject matter,” majority

opinion at ¶ 31, when calculating statutory damages. This court also has never before considered it and it should not do so now. Similarly, the timing of the transmissions does not matter.

{¶ 51} When calculating statutory damages, what matters—and what *is* tied to the statutory language—is whether the public-records requests were made in the same transmission, i.e., in the same envelope or email. Here, Ware transmitted his public-records requests in the same certified-mail envelope. That they were then contained in separate envelopes within that single transmission is irrelevant.

{¶ 52} Today, without enunciating guideposts or rules, the majority has consigned this court to the job of determining in every case in which multiple public-records requests have been made whether those requests are related to the same general topic. Just how alike is alike enough for a public-records request to not constitute a separate request? How many elements will the weighing test require?

{¶ 53} Here, why aren't Ware's Request #1 (requesting a copy of the Hamilton County clerk of courts office's records-retention schedule and public-records policy) and Request #9 (requesting a copy of all time-off requests made by Richard Hoffmann and Aftab Pureval from December 1, 2018, through January 23, 2019) dissimilar enough to be considered separate requests? How alike are the oaths of office of Hoffman and Pureval in Request #6 and the clerk of courts' employees' handbook in Request #4? It will be fascinating to see how the majority fine-tunes a standardless standard.

{¶ 54} The majority bases its decision in part on this court's language in *State ex. rel. Dehler v. Kelly*, 127 Ohio St.3d 309, 2010-Ohio-5724, 939 N.E.2d 828, ¶ 4, that the statutory-damages provision “does not permit stacking of statutory damages based on what is essentially the same records request.” In *Dehler*, the relator had sent the requests for the same records to two different offices. That is not the situation in this case.

{¶ 55} I acknowledge that this court has held that a reiterated request for the same records does not require an additional response by the public office. *State ex rel. Laborers Internatl. Union of N. Am., Local Union No. 500 v. Summerville*, 122 Ohio St.3d 1234, 2009-Ohio-4090, 913 N.E.2d 452, ¶ 6. But that also is not the situation in this case. The majority is correct that a requester is not entitled to multiple damages awards if the requester sought the same public record by transmitting the same request multiple times. But “[t]he antistacking principle does not prohibit multiple statutory-damage awards when violations occur in connection with different records requests.” *Myers*, 169 Ohio St.3d 536, 2022-Ohio-1915, 207 N.E.3d 579, at ¶ 59.

{¶ 56} An award of statutory damages is guaranteed and fixed under R.C. 149.43(C)(2) if certain criteria are met. The public-records holder controls whether statutory damages may be awarded to the requester and whether the holder will have to pay up to \$1,000 for not fulfilling a duty under R.C. 149.43(B). Both are squarely within the control of the public-records holder because an award of statutory damages becomes available to the public-records requester if and when the requester has followed the law but the public-records holder has not.

{¶ 57} In R.C. 149.43(C)(2), the General Assembly makes statutory damages available for a requester who transmits a public-records request by certified mail, hand delivery, or electronic submission when the public office or person responsible for those records fails to abide by the requirements of R.C. 149.43(B). Here, because the clerk of courts did not comply with R.C. 149.43(B) and Ware complied with R.C. 149.43(C)(2), Ware is entitled to an award of \$700 for the one transmission he made to the clerk of courts.

{¶ 58} Therefore, I concur in the majority’s judgment awarding \$700 but not in its reasoning for awarding that amount.

Kimani Ware, pro se.

SUPREME COURT OF OHIO

Joseph T. Deters, Hamilton County Prosecuting Attorney, and Philip R. Cummings, Assistant Prosecuting Attorney, for appellee.
