[Cite as *State ex rel. Cleveland Assn. of Rescue Emps. v. Cleveland*, 174 Ohio St.3d 6, 2023-Ohio-3112.]

THE STATE EX REL. CLEVELAND ASSOCIATION OF RESCUE EMPLOYEES ET AL., APPELLEES, *v.* THE CITY OF CLEVELAND, APPELLANT.

[Cite as *State ex rel. Cleveland Assn. of Rescue Emps. v. Cleveland*, 174 Ohio St.3d 6, 2023-Ohio-3112.]

Mandamus—Public-records requests—Public Records Act does not permit denial of open-ended requests for all emails sent to and/or from one or more specified individuals whenever search terms have not been provided—Union's requests for emails "exchanged between" two particular city employees over 27-day period and emails "to and from" third city employee's email address over same period identified the records it was seeking with reasonable clarity—Court of appeals' judgment granting writ in part and denying it in part, awarding union statutory damages, and ordering city to pay court costs affirmed and award of attorney fees reversed.

(No. 2022-1091—Submitted February 28, 2023—Decided September 7, 2023.)

APPEAL from the Court of Appeals for Cuyahoga County,
No. 111230, 2022-Ohio-3043.

Per Curiam.

{¶ 1} Appellant, the city of Cleveland, appeals the judgment of the Eighth District Court of Appeals granting in part and denying in part a writ of mandamus to appellees, Cleveland Association of Rescue Employees and its president, Paul Melhuish (collectively, "the union"), awarding the union statutory damages and attorney fees, and ordering the city to pay court costs. While this appeal was pending, the city filed a motion for oral argument. We deny the city's request for oral argument and affirm the court of appeals' judgment granting in part and

denying in part the writ of mandamus, awarding the union statutory damages, and ordering the city to pay court costs. We reverse the court of appeals' award of attorney fees.

I. FACTUAL AND PROCEDURAL BACKGROUND

{¶ 2} On January 6, 2022, the union submitted two public-records requests through the city's online public-records-request portal. The requests sought:

> [1] [a]ll emails exchanged between the following e-mail addresses for the time period between 12/9/2021 and 1/5/2022[:]
>
> khoward2@clevelandohio.gov (Karrie Howard) and ncarlton@clevelandohio.gov (Nicole Carlton)[; and]
>
> [2] * * * all emails to and from the following email address between the dates of 12/9/2021 and 1/5/2022:
>
> Dtownsend@clevelandohio.gov (Townsend, Dawntaunya S).

{¶ 3} Five days later, on January 11, the city sent the following email denying each request:

> The City respectfully to [sic] your request for all communication * * * as being overly broad. It is the responsibility of the requester to identify with reasonable clarity the records being sought. *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391 [2008-Ohio-4788, 894 N.E.2d 686]; *State ex rel. Bristow v. Wilson* [6th Dist. Erie Nos. E-17-060, E-17-067, and E-17-070, 2018-Ohio-1973]; *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312 [750 N.E.2d 156] (2001). If you choose to revise your request, please

> identify names of the messages' sender and recipient(s), or domain email address, and search terms.

{¶ 4} The union did not send revised requests. Ten days later, on January 21, the union received the following email regarding each request:

> In regards to the City – Public Records Request received on 1/6/2022 requesting records, the records have been in **"Requested Clarification"** status for 10 days. The City of Cleveland considers this request closed. If you would still like the records, please submit another City – Public Records Request. Thank you for using the Cleveland Public Records Center.

(Boldface and underlining sic.)

{¶ 5} On January 31, the union filed a complaint for a writ of mandamus in the Eighth District to compel production of the requested records. The complaint named as respondents Public Records Administrator Kim Roberson and the city, the latter in care of Director of Law Barbara Langhenry. The union also sought statutory damages and attorney fees for the city's alleged violation of R.C. 149.43(B). The clerk of courts sent the complaint by certified mail to Roberson, the city, and Langhenry. However, certified-mail service failed when service was refused on February 3.

{¶ 6} The court of appeals had scheduled mediation automatically under a local rule but canceled it upon learning that certified-mail service had failed. The certified-mail return receipts were docketed as "refused" on February 25. Service by regular mail was accepted on February 28.

{¶ 7} On March 10, the court of appeals issued an alternative writ ordering the city to release all requested records or show cause why they should not be

released and "why certified mail service was not effected." On March 16, the city simultaneously filed an answer to the complaint and a motion for reconsideration of the alternative writ, to cancel the show-cause hearing, and to schedule the case for mediation. The city asserted that it had inadvertently refused service, that Roberson was no longer employed as the city's public-records administrator, and that Langhenry was no longer employed as the director of the city's legal department. The city further indicated that when the union had sent prior public-records requests to the city, the union had "worked with" the city "to clarify their requests for 'all emails' for a certain period, to include topics and/or search terms."

{¶ 8} The court held a show-cause hearing on March 22. According to the court, at the show-cause hearing, the union "admitted that it wanted records relating to payroll and time-keeping problems following a data breach." 2022-Ohio-3043, ¶ 8. Later that day, the court filed a journal entry stating:

> The court continues the alternative writ as follows: The city of Cleveland shall release the requested records by April 1, 2022, and shall certify to the court on that date what records have been released, including the number of records. If the city withholds records or redacts records, it shall identify those records and explain, with supporting legal authority, why the records were withheld or redacted. The relators by April 15, 2022, shall certify whether they are satisfied that the released records have fulfilled their request, and if not, why they believe the requests have not been fulfilled. This includes opposing redactions. * * * The court orders the parties to co-operate with each other for the quick release of the requested records.

{¶ 9} In a March 28 filing, the city certified that in response to the union's first records request, the city had provided to the union "51 pages of emails, including attachments, * * * concerning * * * payroll and timekeeping problems in December 2021 and January 2022, following the data breach of UKG Solutions, also called Kronos," that "[n]o redactions were made to the emails produced," and that the city was not withholding any responsive emails "on the basis of any privilege or exception to R.C. 149.43." The city certified that in response to the union's second records request, the city had produced "262 pages of emails, including attachments, * * * concerning * * * payroll and timekeeping problems following the Kronos data breach" and that redactions had been made on two pages to "an individual employee's paystub attached to an email, on the basis that the paystub was nonresponsive."

{¶ 10} On April 15, 2022, the union notified the court of appeals that the city had "sufficiently produced the public records sought" in this action, thereby mooting the union's mandamus claim in part. However, the union simultaneously filed a motion for summary judgment with respect to statutory damages and attorney fees, arguing that its requests were not overbroad and that the city thus had violated R.C. 149.43(B) when it failed to promptly provide the responsive records. The city filed a combined brief in opposition and cross-motion for summary judgment, arguing that the requests were overbroad, that it had timely responded to the union explaining its decision, and that the union was not entitled to statutory damages or attorney fees.

{¶ 11} The court of appeals determined that the union's requests as initially worded "stated with clarity what records were requested," 2022-Ohio-3043 at ¶ 13, determined that the city's failure to honor them "undermine[d] the purpose of the [P]ublic [R]ecords [A]ct," *id.*, and granted in part and denied in part the requested writ of mandamus, *id.* at ¶ 18-19. The court found that the "representations made at the show cause hearing on March 22, 2022, indicated that [the city] had not

released any records by that date, more than ten business days after the perfection of service." *Id*. at ¶ 16. Based on that finding, the court awarded the union statutory damages in the amount of $1,000 and attorney fees in the amount of $4,672.50 and ordered the city to pay court costs. *Id*. at ¶ 16-18. The court also dismissed Roberson from the lawsuit because she was no longer the city's public-records administrator. *Id*. at ¶ 18.

{¶ 12} The city appealed to this court as of right, and we granted the city's unopposed motion to stay the court of appeals' judgment. 168 Ohio St.3d 1404, 2022-Ohio-3545, 195 N.E.3d 1042.

II. LEGAL ANALYSIS

A. City's motion for oral argument

{¶ 13} We have discretion to order oral argument upon the request of a party in an appeal under S.Ct.Prac.R. 17.02(A). The factors that inform our discretion are "whether the case involves a matter of great public importance, complex issues of law or fact, a substantial constitutional issue, or a conflict among the courts of appeals." *State ex rel. Scott v. Streetsboro*, 150 Ohio St.3d 1, 2016-Ohio-3308, 78 N.E.3d 809, ¶ 9.

{¶ 14} The city moved for oral argument because, in its view, "whether search terms are required when a public records requester requests emails stored electronically by a public office" is an important issue. Yet the city has conceded that the material facts are undisputed, and it has not identified any reason why the parties' briefs provide an insufficient basis for evaluating the issues germane to this appeal.

{¶ 15} The city's reasons in support of its request are unconvincing, and we deny the request for oral argument.

B. Standard of review

{¶ 16} Because the city provided the union with the requested records during the mandamus proceedings, only the court of appeals' decision granting

summary judgment to the union and ordering the city to pay statutory damages, court costs, and attorney fees is at issue. We review de novo a court of appeals' grant of summary judgment in a mandamus action. *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 165 Ohio St.3d 292, 2021-Ohio-2374, 178 N.E.3d 492, ¶ 11. Summary judgment is appropriate when the evidence, properly submitted, shows that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Civ.R. 56(C); *Todd Dev. Co., Inc. v. Morgan*, 116 Ohio St.3d 461, 2008-Ohio-87, 880 N.E.2d 88, ¶ 11.

C. Whether a request for "all emails" is overbroad

{¶ 17} The city first argues that a public-records request seeking "all emails" is overbroad when it does not identify applicable "search terms." A public office may deny a request as overbroad if the office "cannot reasonably identify what public records are being requested." R.C. 149.43(B)(2). Moreover, "a request that seeks duplication of entire categories of documents is overly broad and may be denied on that basis." *State ex rel. Summers v. Fox*, 163 Ohio St.3d 217, 2020-Ohio-5585, 169 N.E.3d 625, ¶ 73; *see also State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 624, 640 N.E.2d 174 (1994) (holding that the Public Records Act "does not contemplate that any individual has the right to a complete duplication of voluminous files kept by government agencies").

{¶ 18} The city claims that it seeks clarification from a public-records requester "[w]henever an open-ended request is made for voluminous public records in the form of * * * 'all emails' to/from a certain account." Thus, the city argues, it acted reasonably when it requested that the union narrow its request for "all emails" by providing search terms.

{¶ 19} The city cites several cases in support of its argument that a public-records request for "all emails" sent to or from a specified city employee without limitation by search terms is understood to be an unenforceable, overbroad request.

{¶ 20} In *State ex rel. Dissell v. Cleveland*, 8th Dist. Cuyahoga No. 110425, 2021-Ohio-2937, ¶ 1, the relator had requested "all communications sent to the Mayor's Action Center ('MAC') in 2018, 2019, and the first ten months of 2020." The Eighth District determined that the request was overbroad, "constituting a complete duplication of voluminous files," and denied relief. *Id*. In *Dissell*, after reviewing the records produced, the court reasoned that "the diversity of emails sent to the MAC show that there is, in fact, no subject-matter limitation." *Id*. at ¶ 19.

{¶ 21} In *State ex rel. Bristow v. Wilson*, 6th Dist. Erie Nos. E-17-060, E-17-067, and E-17-070, 2018-Ohio-1973, ¶ 12, a court of appeals determined that a request for "every email sent and received" by the six respondents and their employees over a one-month period was overbroad because it "essentially [sought] a complete duplication of the respondents' email files, albeit in one-month increments." The court rejected the relator's argument that a temporal limitation of one month had sufficiently narrowed the requests. The court also found that the respondents complied with R.C. 143.49(B)(2) when they "invited [the relator] to revise his requests (which [he] declined to do) * * * to 'specific topics or subject matter'—indicating that [the] respondents organize[d] their email files by subject." *Id*. at ¶ 13.

{¶ 22} In *State ex rel. Harris v. Rose*, 5th Dist. Richland No. 2022 CA 0022, 2022-Ohio-3729, ¶ 19, 21, a court of appeals determined that a prison inmate's request for emails sent from one specified corrections officer to another was overbroad and that the records custodian had complied with her duties under R.C. 143.49(B) by requesting that the inmate "specify a time frame."

{¶ 23} And in *State ex rel. Adams v. Ohio State Univ.*, 10th Dist. Franklin No. 18AP-1005, 2020-Ohio-2843, ¶ 39, a court of appeals adopted the recommendation of a magistrate to grant a limited writ of mandamus ordering a university to produce documents "included in the full chronological range of [the]

relator's request and covering all of [his] submitted search terms." In that case, the relator's initial request was for "all communications to or from" five named individuals "and 14 university officers and employees." *Id*. at ¶ 12. The relator revised his initial request twice in response to the university's assertions that the request was overbroad. *Id*. at ¶ 15-18.

{¶ 24} Although these cases indicate that an open-ended request for all emails sent to and/or from one or more specified individuals could be overbroad, the decisions do not support the proposition that the union's January 6, 2022 public-records requests were overbroad as a matter of law because they lacked search terms. We have never held that R.C. 149.43(B) authorizes a public office to automatically deny a public-records request when search terms have not been provided. R.C. 149.43(B) requires a public office to meaningfully review each public-records request before denying it out-of-hand for lack of search terms. *See State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶ 26 ("Manifestly, each request—and each retention category when the request is structured after such a category—must be analyzed under the totality of facts and circumstances"). The city's admitted practice contravenes the purpose of the Public Records Act, "which is to expose government activity to public scrutiny," *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, 805 N.E.2d 1094, ¶ 5.

{¶ 25} We reject the city's argument that the Public Records Act permits the denial of open-ended public-records requests for all emails sent to and/or from one or more specified individuals whenever search terms have not been provided.

D. Whether the city's refusal to search for responsive records until it received search terms was reasonable under the circumstances

{¶ 26} The city also challenges the court of appeals' conclusion that the union had a clear legal right to records based on the initial wording of its public-records requests. The city contends that the union's requests were not "sufficiently

limited by time frame and accounts at issue" and that the city did not violate the Public Records Act by demanding that the union provide search terms.

{¶ 27} We reject the city's arguments because the union's requests as initially worded identified the sought-after records with reasonable clarity. The union requested email correspondence, not all communications without limitation, and therefore did not require "a complete duplication" of the city's "voluminous files," *Glasgow*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, at ¶ 17; *see id.* at ¶ 19 (request for "all [of a state representative's] work-related e-mail messages, text messages, and correspondence during her entire tenure" was overbroad); *State ex rel. Dehler v. Spatny*, 127 Ohio St.3d 312, 2010-Ohio-5711, 939 N.E.2d 831, ¶ 3 (request for "all of the records relating to the quartermaster's orders for and receipt of clothing and shoes for a period of over seven years" was overbroad). Moreover, the union requested emails exchanged between two particular city employees over a 27-day period and emails "to and from" a third city employee's email address over the same period. Rather than being overbroad, the union's requests were straightforward and not overly burdensome. Accordingly, we affirm the court of appeals' determination that the city violated an obligation under R.C. 149.43(B) when it refused to promptly produce the records responsive to the January 6, 2022 requests.

E. Statutory damages

{¶ 28} "A person requesting public records 'shall' be entitled to recover 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).' " *State ex rel. Ware v. Akron*, 164 Ohio St.3d 557, 2021-Ohio-624, 174 N.E.3d 724, ¶ 16, quoting R.C. 149.43(C)(2). The court may reduce or not award statutory damages if it determines that (1) based on the law as it existed at the time of the request, a well-informed person responsible for the records reasonably would have believed that R.C. 149.43(B) did not require

their disclosure and (2) a well-informed person responsible for the records reasonably would have believed that withholding the records would serve the public policy that underlies the authority asserted for withholding them. R.C. 149.43(C)(2)(a) and (b). A court's decision not to reduce or eliminate statutory damages is subject to review for an abuse of discretion. *State ex rel. Cincinnati Enquirer v. Sage*, 142 Ohio St.3d 392, 2015-Ohio-974, 31 N.E.3d 616, ¶ 44.

{¶ 29} The city argues that it satisfied R.C. 149.43(C)(2)(a) and (b) because its response asking that the union narrow its request by providing search terms was reasonable based on *State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 22, 2018-Ohio-5110, 123 N.E.3d 895, and *Dissell*, 2021-Ohio-2937, and was "in furtherance of the public policies underlying those cases, *i.e.*, avoiding a complete duplication of voluminous files in response to a records request and unreasonable interference with the discharge of the duties of the records custodian." But the city did not raise this argument in the proceedings below; instead, the city maintained in the court of appeals that "[s]tatutory damages would be inappropriate in this case under R.C. 149.43(C)(2) because the City did not fail to meet any obligation under the Public Records Act." Absent an argument by the city below regarding the applicability of R.C. 149.43(C)(2)(a) and (b), the court of appeals' award of full statutory damages was not an abuse of discretion.

F. Costs and attorney fees

{¶ 30} The city challenges the court of appeals' judgment to the extent that it ordered the city to pay the court costs associated with this case. But because the court of appeals concluded that the union was entitled to a writ of mandamus ordering the city to provide public records responsive to its requests, an award of costs to the union was mandatory under R.C. 149.43(C)(3)(a)(i). The court of appeals did not err when it so ordered.

{¶ 31} With regard to attorney fees, an award is discretionary when a court orders a public office to comply with R.C. 149.43(B). *State ex rel. Myers v. Meyers*,

169 Ohio St.3d 536, 2022-Ohio-1915, 207 N.E.3d 579, ¶ 74. There are four discrete "triggering events that grant a court discretion to order reasonable attorney fees in a public-records case." *State ex rel. Rogers v. Dept. of Rehab. & Corr.*, 155 Ohio St.3d 545, 2018-Ohio-5111, 122 N.E.3d 1208, ¶ 32, citing R.C. 149.43(C)(3)(b). Here, the court of appeals determined that the circumstance outlined in R.C. 149.43(C)(3)(b)(iii) applied to the city's conduct in this case. That provision allows attorney fees if the court determines that

> [t]he public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section.

{¶ 32} A finding of bad faith requires proof that the public office exhibited " 'a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of fraud [or an] actual intent to mislead or deceive [the requester].' " *State ex rel. McDougald v. Greene*, 161 Ohio St.3d 130, 2020-Ohio-3686, 161 N.E.3d 575, ¶ 25-26, quoting *Slater v. Motorists Mut. Ins. Co.*, 174 Ohio St. 148, 187 N.E.2d 45 (1962), paragraph two of the syllabus, *overruled on other grounds by Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552, 644 N.E.2d 397 (1994), paragraph one of the syllabus. The Public Records Act "expressly states that there is no presumption of bad faith based solely on the fact that the public office makes a record available after the mandamus case is filed but before being ordered by the court to do so." *State ex rel. Summers v. Fox*, 164 Ohio St.3d 583, 2021-Ohio-2061, 174 N.E.3d 747, ¶ 17.

{¶ 33} Here, the court of appeals determined that the city acted in bad faith when it refused "to accept certified mail from the court and one of Cleveland's own unions * * * even if the addressees no longer held the relevant positions" because "[t]he source of the letter demanded that it be accepted." 2022-Ohio-3043 at ¶ 14. In so determining, the court rejected the city's argument that its "Copy Center" employees were complying with their duties when they rejected the certified-mail service from the clerk of courts.

{¶ 34} R.C. 149.43(C)(3)(b)(iii) is concerned with a public-records custodian's bad faith in not disclosing the requested records until after the relator "commenced the mandamus action" but "before the court issued any order" determining that the public office was required to disclose the documents to comply with its duties under the act. Thus, here, the city's refusal to accept the certified-mail service of the complaint is not a legitimate basis on which to award attorney fees under the Public Records Act, and in this respect, the court of appeals erred.

III. CONCLUSION

{¶ 35} For the foregoing reasons, we affirm the court of appeals' judgment granting in part and denying in part a writ of mandamus, we affirm the court's award of statutory damages and court costs, and we reverse the court's award of attorney fees. We deny the city's request for oral argument.

Judgment affirmed in part
and reversed in part.

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, and DETERS, JJ., concur.

BRUNNER, J., concurs in part and dissents in part and would affirm the court of appeals' award of attorney fees.

Mark D. Griffin, Cleveland Director of Law, and William M. Menzalora and Timothy J. Puin, Assistant Directors of Law, for appellant.

Muskovitz & Lemmerbrock, L.L.C., Ryan J. Lemmerbrock, and Brooks W. Boron, for appellees.