The Supreme Court of Ohio

CASE ANNOUNCEMENTS

August 27, 2025

[Cite as *08/27/2025 Case Announcements #2*, 2025-Ohio-3051.]

MERIT DECISIONS WITHOUT OPINIONS

2025-0501. State ex rel. Jordan v. Dept. of Rehab. & Corr.
In Mandamus. On respondents' motions to dismiss. Motions granted. Cause dismissed.

Brunner, Hawkins, and Shanahan, JJ., concur.
DeWine, J., concurs, with an opinion joined by Deters, J.
Kennedy, C.J., dissents, with an opinion.
Fischer, J., dissents.

DEWINE, J., joined by DETERS, J., concurring.

{¶ 1} I concur in the court's judgment dismissing this case. Recent amendments to Ohio's Public Records Act, R.C. 149.43, mandate that a public-records mandamus action "shall be dismissed" if the relator fails to comply with certain procedural requirements before instituting the action. Robert Jordan Jr. failed to comply with these procedural requirements. Thus, the court properly dismisses the action. I write separately to explain why these amendments are properly applied in this case.

Background

{¶ 2} Jordan made several public-records requests on December 11, 2024. He filed this public-records mandamus action on April 9, 2025, alleging that he had not been provided the records he requested. After he made his public-records requests but before he filed this action, new amendments to the Public Records Act took effect. *See* 2024 Sub.H.B. No. 265.

{¶ 3} The Public Records Act generally allows people to request public records from public offices. R.C. 149.43(B)(1). Once a person makes such a request, the act imposes a duty on the custodian of those records to provide them to the requester "within a reasonable period of time." *Id.* If the custodian fails to do so, the requester may bring a mandamus action in this court, asking us to order the custodian to discharge his duty under the act. *See State ex rel. Wells v. Lakota Local Schools Bd. of Edn.*, 2024-Ohio-3316, ¶ 11.

{¶ 4} The new amendments—which took effect on April 9—impose additional procedural requirements on a person filing a public-records mandamus action. *See* 2024 Sub.H.B. No. 265; R.C. 149.43(C)(1) through (3). Here is how they work: Before filing a mandamus action for a Public Records Act violation, a person must first serve a complaint on the public office or person responsible for the requested records. R.C. 149.43(C)(1). The public office then has three business days to cure the alleged violation. *Id*. Compliance with this requirement is a prerequisite to the commencement of a lawsuit. *Id.* A person may not file a mandamus action unless he submits with his petition

> a written affirmation stating that the person properly transmitted a complaint to the public office or person responsible for public records, [that] the failure alleged in the complaint has not been cured or otherwise resolved to the person's satisfaction, and that the complaint was transmitted to the public office or person responsible for public records at least three business days before the filing of the suit.

R.C. 149.32(C)(2). "If the person fails to file [the] affirmation . . . , the suit shall be dismissed." *Id.*

{¶ 5} No one disputes that Jordan failed to file the affirmation required by the statute. The only question is whether the new Public Records Act amendments apply to his lawsuit. Under longstanding Ohio law, they plainly do. Because the amendments don't affect any vested substantive rights, the amended version of the act in effect when Jordan filed his mandamus action—with the new procedural requirements—controls the resolution of this lawsuit. And because Jordan didn't include a written affirmation with his mandamus complaint, his case "shall be dismissed," R.C. 149.43(C)(2).

The Public Records Act's new procedural requirements apply, requiring us to dismiss Jordan's mandamus action

{¶ 6} Jordan didn't file a written affirmation when he filed this public-records mandamus action on April 9—the day that the new procedural requirements took effect. So, the dispositive issue in this case is whether the amended version of the Public Records Act that imposes the new requirements applies to him. Because the new requirements are procedural in nature, they plainly apply, requiring us to dismiss Jordan's lawsuit.

{¶ 7} "A fundamental distinction exists between a law changing accrued rights and a law which changes the remedy for the enforcement of those rights." *State ex rel. Slaughter v. Indus. Comm.*, 132 Ohio St. 537, 542 (1937), citing *Smith v. New York Cent. RR. Co.*, 122 Ohio St. 45, 48 (1930). "[S]ubstantive law is that which creates duties, rights, and obligations, while procedural or remedial law prescribes methods of enforcement of rights or obtaining redress." *State ex rel. Holdridge v. Indus. Comm.*, 11 Ohio St.2d 175, 178 (1967). We've long held that "[l]aws of a remedial nature providing rules of practice, courses of procedure, or methods of review are applicable to any proceedings conducted after the adoption of such laws." *Id.* at paragraph one of the syllabus; *Estate of Johnson v. Randall Smith, Inc.*, 2013-Ohio-1507, ¶ 20; *Longbottom v. Mercy Hosp. Clermont*, 2013-Ohio-4068, ¶ 23; *State ex rel. Grendell v. Walder*, 2022-Ohio-204, ¶ 35. That means that when there is a new procedural or remedial law, it applies prospectively to all relevant proceedings after it takes effect. *See, e.g.*, *Longbottom* at ¶ 23; *see also State v. Brooks*, 2022-Ohio-2478, ¶ 25-29 (DeWine, J., concurring in judgment only).

{¶ 8} The Public Records Act amendments relevant to this case are purely procedural. Starting April 9, if a public-records requester thinks that his rights to access public records are being violated, he must submit a complaint with the custodian of those records and give the custodian three business days to address the complaint; if the custodian doesn't sufficiently do so, the requester may file a public-records mandamus action in court along with a written affirmation stating that he followed the new filing procedure. R.C. 149.43(C)(1) and (2).

{¶ 9} In no way do these amendments affect whatever rights Jordan may or may not have to the records he requested. They merely affect the procedures that he must comply with to assert whatever rights he already has. They therefore apply prospectively, immediately after taking effect.

{¶ 10} Because these new procedural requirements were in effect when Jordan filed this mandamus action, they applied to *how* he filed it. And because he didn't comply with the new requirements, the statute demands that his action "shall be dismissed," R.C. 149.43(C)(2).

The dissent relies on flimsy precedent

{¶ 11} The dissent acknowledges that the amendments "establish[ed] new procedural requirements." Dissenting opinion, ¶ 19. Nevertheless, it argues that we should apply the version of the Public Records Act that was in effect when Jordan made his public-records request—the version without the new procedural requirements. In doing so, it does not grapple with—or even cite—our longstanding precedent about new procedural requirements applying once they take effect. Rather, it gloms onto a single unreasoned sentence from several other public-records cases and contends that they stand for the proposition that this court always applies the version of the Public Records Act in effect when the relator made his public-records request. But those cases offer faint support for the dissent's argument.

{¶ 12} The dissent cites *State ex rel. Cordell v. Paden*, 2019-Ohio-1216, *State ex rel. Summers v. Fox*, 2021-Ohio-2061, and *State ex rel. Martin v. Greene*, 2019-Ohio-1827, to argue that "'[w]e apply the version of R.C. 149.43 that was in effect at the time that [the relator] made [the public-]records request.'" (Bracketed text in original.) *See* dissenting opinion at ¶ 22, quoting *Cordell* at ¶ 11. But even a cursory look at these cases reveals "'turtles all the way down,'" *Rapanos v. United States*, 547 U.S. 715, 754 and fn. 14 (2006), citing Geertz, Thick Description: Toward an Interpretive Theory of Culture, in *The Interpretation of Cultures* 28-29 (1973).

{¶ 13} The problem is that *Cordell* and *Martin* rely solely on *State ex rel. Kesterson v. Kent State Univ.*, 2018-Ohio-5108, ¶ 11, fn. 1, for the proposition that we apply the version of the Public Records Act in effect when a requester made his public-records request. *See Cordell* at ¶ 11; *Martin* at ¶ 9. But *Kesterson* doesn't say that; it says that the requester's complaint in that case was governed by the version of the act that "was effective on the dates she made her public-records request *and commenced her original action before this court*." (Emphasis added.) *Kesterson* at ¶ 11, fn. 1. *Summers* is no better—it relies solely on *Cordell* for the same proposition. *See Summers* at ¶ 21, fn. 3. Neither *Cordell* nor *Summers* nor *Martin* provide any explanation for their break from *Kesterson*.

{¶ 14} Moreover, neither *Cordell* nor *Summers* nor *Martin* provide any analysis on the question of which version of the Public Records Act properly applied in those cases. They don't even examine whether the relevant amendments were procedural. They simply state in one conclusory sentence that the court was applying the version in effect at the time the request was made. Of course, "[t]he precedential sway of a case is directly related to the care and reasoning reflected in the court's opinion." *See* Bryan A. Garner et al., *The Law of Judicial Precedent*, 226 (2016). That means that unreasoned statements have little precedential force. *See McCullough v. Bennett*, 2024-Ohio-2783, ¶ 17 and fn. 1. So rather than providing "reasoning that binds this court under the doctrine of stare decisis," dissenting opinion at ¶ 24, the cases cited by the dissent demonstrate simply an unexplained misstep.

{¶ 15} Because *Cordell*, *Summers*, and *Martin* do not even address the question of whether the relevant Public Records Act amendments in those cases were procedural, nothing in those cases can be read as contrary to our longstanding rule that "[l]aws of a remedial nature providing rules of practice, courses of procedure, or methods of review are applicable to any proceedings conducted after the adoption of such laws." *Holdridge*, 11 Ohio St.2d at paragraph one of the syllabus.

{¶ 16} The dissent also cites *State ex rel. Doe v. Smith*, 2009-Ohio-4149, for support. *See* dissenting opinion at ¶ 22-23. But that case doesn't support the dissent's argument either. In it, both the public-records request *and the filing of the mandamus action* occurred after the relevant amendments to the Public Records Act. *See Doe* at ¶ 21. That's why we applied the postamendment version of the act in that case—not just "because that was the law in effect when the public-records request was made," dissenting opinion at ¶ 23.

{¶ 17} The cases cited by the dissent cannot bear the weight that the dissent puts on them. Rather than wobble on their flimsy foundation, the court today stands on the solid foundation of longstanding precedent. I concur.

Conclusion

{¶ 18} Because Jordan didn't comply with the Public Records Act's new procedural requirements, this court is required to dismiss his public-records mandamus action. I concur in the court's judgment dismissing the case.

KENNEDY, C.J., dissenting.

I. H.B. 265

{¶ 19} Effective April 9, 2025, the General Assembly amended the Ohio Public Records Act, R.C. 149.43, establishing new procedural requirements for a public-records requester to bring a mandamus action seeking to compel the production of public records and eliminating awards of statutory damages in such actions to relators who are incarcerated. *See* R.C. 149.43(C)(1) through (3), 2024 Sub.H.B. No. 265 ("H.B. 265"). An important question presented in this case is whether those amendments apply to the mandamus action that relator, Robert Jordan Jr., brought in this court seeking to compel respondents Ohio Department of Rehabilitation and Correction, Lebanon Correctional Institution, and Mansfield Correctional Institution (collectively, "DRC") and respondent Northeast Ohio Correctional Center ("NEOCC"), to provide him with copies of the public records he requested. The answer is no.

{¶ 20} Relevant here, H.B. 265 requires a person who is allegedly aggrieved by a public-records custodian's failure to comply with R.C. 149.43(B) to transmit a complaint to the custodian who is allegedly responsible for the statutory violation. R.C. 149.43(C)(1). The public-records custodian then has three days to cure or otherwise address the alleged violation before the complaint may be filed. *Id.* If the complaint is filed after the cure period has elapsed, it must be accompanied by the relator's written affirmation that he or she has complied with these new procedural requirements; if no written affirmation is filed, "the suit shall be dismissed." R.C. 149.43(C)(2). Lastly, H.B. 265 prohibits incarcerated people from receiving statutory damages based on a public-records custodian's failure to comply with R.C. 149.43(B).

{¶ 21} DRC and NEOCC have each moved to dismiss Jordan's mandamus complaint, arguing that H.B. 265 requires that Jordan's action be dismissed because he filed his mandamus complaint on April 9, 2025, the effective date of H.B. 265, but did not file a written affirmation with the complaint attesting that he had served it on respondents three days before commencing this action. Respondents maintain that if H.B. 265's amendments apply to Jordan's mandamus claim, the action must be dismissed. The majority apparently adopts this position, because it grants the motions to dismiss.

{¶ 22} However, this court has unanimously held that "[w]e apply the version of R.C. 149.43 that was in effect at the time that [the relator] made [the public-]records requests." *State ex rel. Cordell v. Paden*, 2019-Ohio-1216, ¶ 11. In *Cordell*, we denied the relator's request

for an award of court costs because the version of R.C. 149.43(C)(3)(a) in effect when the request was made did not authorize the court to award court costs based on a finding of bad faith; at that time, court costs were available only if the court ordered the public-records custodian to comply with R.C. 149.43(B). *See* former R.C. 149.43(C)(3)(a), 2016 Sub.H.B. No. 471.

{¶ 23} In *State ex rel. Summers v. Fox*, we said—again, unanimously—that an amendment to the Public Records Act authorizing the court to award statutory damages if the public-records request was electronically submitted did not apply in that case, because the version of R.C. 149.43 that was in effect when the request was made authorized us to award statutory damages only if the request was submitted by hand delivery or certified mail. 2021-Ohio-2061, ¶ 21, fn. 3, citing former R.C. 149.43(C)(2), 2016 Sub.H.B. No. 471; *accord State ex rel. Martin v. Greene*, 2019-Ohio-1827, ¶ 9. And this court held in *State ex rel. Doe v. Smith* that an amendment to the Public Records Act making an award of attorney fees mandatory in certain situations applied in that case because that was the law in effect when the public-records request was made. 2009-Ohio-4149, ¶ 21, *superseded by statute on other grounds as stated in State ex rel. DiFranco v. S. Euclid*, 2014-Ohio-538. If only the date the action is filed controls, then the majority's statement in *Doe* that the case "pertain[ed] to a records request made after the effective date of the amendment," *id.*, is wholly superfluous.

{¶ 24} The concurring opinion says that this dissent simply "gloms onto a single sentence from several other public-records cases." Concurring opinion, ¶ 11. That is not true. This dissent gloms onto a statement of law that was actually *applied* by this court in those cases, and the reasoning applied by this court in those cases "generates a principle of law" that extends to other cases, *United States v. Johnson*, 921 F.3d 991, 1003 (11th Cir. 2019) (en banc). It is that reasoning that creates precedent, and it is that reasoning that binds this court under the doctrine of stare decisis. Editorializing and changes of heart aside, *Cordell* and the subsequent decisions of this court that relied on it plainly give more than "faint support," concurring opinion at ¶ 11, for the principle of law that we apply the version of R.C. 149.43 that was in effect when the public-records requester made his request. Those decisions are binding precedent.

{¶ 25} I recognize that there may be good reasons for departing from this caselaw. But there may be even better reasons for adhering to it that have not yet occurred to us. Future parties should not be foreclosed from making those arguments. But here, neither DRC nor NEOCC cited our prior decisions addressing the matter or asked us to overrule them, and Jordan

did not respond to either motion to dismiss. So for now, judicial restraint counsels us to follow precedent as it currently stands.

{¶ 26} In this case, Jordan made his public-records request before the effective date of H.B. 265. According to our most recent precedent, the new procedural requirements for bringing a mandamus action to compel the production of public records and the elimination of the court's authority to award statutory damages to relators who are incarcerated do not apply. Because this is the only ground for dismissal raised in the motion filed by DRC, that motion should be denied.

II. NEOCC's Additional Arguments

{¶ 27} NEOCC raises additional grounds for dismissal in its motion to dismiss. In reviewing a motion to dismiss for failure to state a claim upon which relief can be granted, the court must accept all factual allegations in the complaint as true. *Lunsford v. Sterilite of Ohio, L.L.C.*, 2020-Ohio-4193, ¶ 22. A motion to dismiss should not be granted unless it appears beyond doubt that the relator can prove no set of facts entitling him or her to relief. *Id.* The court cannot go beyond the four corners of the complaint in reviewing a motion to dismiss. *State ex rel. Scott v. Cleveland*, 2006-Ohio-6573, ¶ 26.

{¶ 28} First, NEOCC asserts that Jordan did not submit his public-records requests to the person responsible for public records at that facility. However, Jordan alleges that he sent his public-records requests to NEOCC. And copies of Jordan's public-records requests attached as exhibits to his complaint show that (1) while incarcerated at North Central Correctional Institution ("NCCI"), he submitted three electronic kites to staff at NCCI, requesting records from NEOCC "[p]ursuant to Revised Code 149.43(B)" and (2) the recipient of those requests at NCCI responded to Jordan, informing him that the public-records requests were going to be forwarded to NEOCC. We must accept Jordan's allegations as true, and we cannot go outside the complaint and its exhibits to consider NEOCC's factual assertions made in its motion to dismiss suggesting that it never received the public-records requests. It is therefore not beyond doubt that Jordan can prove no set of facts showing entitlement to relief.

{¶ 29} Second, NEOCC maintains that it "is a prison facility owned and operated by CoreCivic and, as such, it is a non-jural entity that is not subject to suit." However, Jordan sufficiently alleges that NEOCC is responsible for the records he seeks, and NEOCC asks this court to look beyond the complaint and take notice of its ownership and management structure.

That is inappropriate at the motion-to-dismiss stage of litigation. *See Scott*, 2006-Ohio-6573, at ¶ 26.

{¶ 30} For these reasons, I would deny both motions to dismiss, order respondents to file an answer, and grant an alternative writ setting a briefing schedule. Because the court does otherwise, I dissent.