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**SLIP OPINION NO. 2026-OHIO-3270**

**THE STATE EX REL. CLARK *v.* OHIO DEPARTMENT OF REHABILITATION AND CORRECTION.**

**[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Clark v. Dept. of Rehab. & Corr.*, Slip Opinion No. 2026-Ohio-3270.]**

*Mandamus—Public-records requests—R.C. 149.43—Inmate not entitled to writ ordering public office to produce (1) records that inmate has failed to show that public office created, stores, or maintains, (2) body-worn-camera footage that inmate has failed to show currently exists, (3) stationary-surveillance-camera footage that public office allowed inmate to inspect in lieu of providing a copy of footage on a disc, (4) requested records that inmate has already been provided, or (5) out-of-date recreation schedule in lieu of schedule that was current when provided—Inmate entitled to limited writ ordering public office to provide him with public record that "existed as a separate document at some point" from what was previously produced—Writ granted in part and denied in part—Relator's request for*

*statutory damages deferred to extent it relates to the limited writ and otherwise denied.*

(No. 2025-0208—Submitted October 7, 2025—Decided August 25, 2026.)

IN MANDAMUS.

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DEWINE, J., authored the opinion of the court, which FISCHER, DETERS, HAWKINS, and SHANAHAN, JJ., joined. KENNEDY, C.J., concurred in part and dissented in part, with an opinion. BRUNNER, J., joined Chief Justice Kennedy's separate opinion and would grant relator's motion to compel.

**DEWINE, J.**

**{¶ 1}** This is a mandamus action involving requests for public records. Through five communications sent to the Ohio Department of Rehabilitation and Correction ("ODRC"), Thomas Clark, an inmate at Lebanon Correctional Institution ("LeCI"), requested copies of eight items. The public-records custodian denied some of the requests and provided records in response to others. Not satisfied, Clark filed this original action, seeking a writ of mandamus ordering ODRC to produce copies of the requested items, as well as statutory damages.

**{¶ 2}** As to one of the requested items, we grant a limited writ ordering ODRC to either (1) provide Clark with a copy of the requested item or (2) certify to this court that the requested item does not exist or is not in ODRC's possession. We defer a determination of statutory damages regarding that item until ODRC complies with the limited writ. We deny the writ and statutory damages as to Clark's remaining requests because he has not met his burden of showing that he is entitled to the requested items or that ODRC violated a clear legal duty in not producing the requested items.

## I. BACKGROUND

**{¶ 3}** Clark sent five electronic kites[1] to prison officials, asking for public records. Each is detailed below.

### A. Clark's November 26, 2024 kite to Myers

**{¶ 4}** On November 26, 2024, Clark sent a kite to Ellen Myers, who was at that time the warden's administrative assistant and the public-information officer at LeCI. He asked for paper copies of (1) the "current ViaPath Technologies Terms of Use, effective date May 2, 2024," and (2) the current contract between ODRC and ViaPath Technologies. Myers acknowledged receiving the request, and on January 14, 2025, Myers informed Clark that ODRC was still waiting for a response from ViaPath.

**{¶ 5}** Myers retired on January 24, 2025, and was replaced by Robert Flowers on February 9. Flowers attests that ViaPath's terms of use was not created, stored, or maintained at LeCI or ODRC, but that he reached out to ViaPath to obtain a copy. Flowers attests that ViaPath has not yet responded to his request. Although ODRC does not maintain the contract between ViaPath and ODRC, the Ohio Department of Administrative Services ("ODAS") does maintain the ViaPath contract and ODRC staff can request a copy from ODAS. Ultimately, Flowers was able to obtain a copy of the terms of use and provided it to Clark on April 30, 2025.

### B. Clark's December 18, 2024 kite to Myers

**{¶ 6}** On December 18, 2024, Clark sent an electronic kite to Myers requesting that the prison preserve and allow him to inspect (1) the body-worn-camera footage from the two officers who searched his prison cell earlier that day and (2) any stationary-surveillance-camera footage of the two officers entering or exiting the G block and his cell. He asked that a copy of the footage be provided

1. "A kite is a type of written correspondence between an inmate and prison staff." *State ex rel. Griffin v. Szoke*, 2023-Ohio-3096, ¶ 3.

to him on a video disc. According to Clark, the requested footage shows a search of Clark's cell during which Clark claims his personal property was damaged.

**{¶ 7}** Myers responded the next day, stating that the stationary-surveillance-camera footage from December 18 for G block would be preserved. Myers permitted Clark to view the stationary-surveillance-camera footage, but did not provide him with a copy of the footage on a disc.

**{¶ 8}** Myers, however, denied Clark's request for the body-worn-camera footage, stating the cell search was not a qualifying event for which a body-worn camera is activated. For background, ODRC's policy pertaining to body-worn cameras explains that even when an employee's body-worn camera is not actively recording, the camera still creates latent low-resolution video and audio recordings. ODRC Policy No. 10-SAF-22(VI)(K)(1) and (2) (effective Aug. 1, 2023). The policy refers to these latent low-resolution recordings as "video recall." ODRC Policy No. 10-SAF-22(VI)(K)(2). While these latent images are constantly being overwritten, ODRC's policy explains that they can be accessed and preserved for up to 18 hours in certain narrow circumstances: the recordings must be accessed in the case of a "qualifying event" and may be accessed "when there is a documented and legitimate correctional supervisory or criminal justice reason." ODRC Policy No. 10-SAF-22(VI)(K)(1), (2), and (4).

### C. Clark's December 20, 2024 kite to Myers

**{¶ 9}** Clark made a public-records request on December 3, 2024, for the current food-services contract between ODRC and Aramark, and a copy of that contract was provided to Clark on December 19. Then, on December 20, Clark sent another electronic kite to Myers, requesting Aramark's submitted proposal in response to request for proposal No. CSP900122. Clark elaborated that he was seeking a copy of the proposal that Aramark had submitted to win the bid for the current ODRC food-services contract. Myers responded on December 23, telling Clark the request had been forwarded to the ODRC's operation support center. To

date, the only record delivered to Clark was the one delivered by Myers on December 19.

**D. Clark's January 3, 2025 kite to Myers**

**{¶ 10}** On January 3, 2025, Clark sent an electronic kite to Myers requesting a paper copy of the most recent employee rosters for each department at LeCI. On January 14, Myers informed Clark that the request was being reviewed by legal services. Clark states that as of the filing of his writ petition, he had not been provided with the requested records. Flowers, however, attests that "[a] paper copy of the recent employee roster for LeCI" was delivered to Clark on January 15, and that Clark acknowledged receiving the employee roster by signing a copy of the January 3 kite relaying that public-records request. A copy of the kite confirms that it is notated "Received on 1/15/25," and signed with a signature that Clark has confirmed is his own.

**{¶ 11}** In a rebuttal affidavit, Clark attests that his signature on the copy of the January 3 kite served only to acknowledge (1) "the receipt of the request kite" and (2) that Myers had verbally updated him on January 15 about the status of his January 3 public-records request. He maintains that Myers never provided him with the requested employee rosters.

**E. Clark's January 22, 2025 kite to Zielinski**

**{¶ 12}** On January 22, 2025, Clark sent an electronic kite asking for a "paper copy of the record of the current LeCI recreation schedule for each block." Despite having been notified multiple times previously that he should direct public-records requests to the institution's public-records coordinator, Clark sent his request to the recreation department. A recreation-department employee responded later that day and explained that each block gets one hour of recreation per day, but the employee did not provide the requested schedule. Flowers learned about Clark's request for the first time during the week of March 10, after this mandamus action was filed. On March 14, Flowers sent Clark a copy of the recreation schedule

for the week of March 10 through 16. Despite receiving the schedule, Clark maintains that he has not received a copy of the requested record because his request for the "current LeCI recreation schedule" refers to the schedule "that pertains to January 22, 2025."

## II. ANALYSIS

**{¶ 13}** Clark filed this mandamus action in February 2025. He requests (1) a writ of mandamus compelling ODRC to provide him with copies of the public records he requested and (2) statutory damages. In April 2025, we issued an alternative writ, setting the schedule for the submission of evidence and briefs. 2025-Ohio-1313. Both parties filed evidence and briefs. During the course of the litigation, Clark also filed two motions, which we dispense with below.

### A. Motions

**{¶ 14}** Clark filed a motion to compel ODRC to treat all correspondence that he receives from this court as legal mail and a motion for leave to file rebuttal evidence. We deny the motion to compel ODRC to treat all correspondence that he receives from this court as legal mail. We grant in part and deny in part the motion for leave to file rebuttal evidence.

#### *1. Clark's motion to compel ODRC to treat all correspondence that he receives from this court as legal mail*

**{¶ 15}** Clark's first motion involves ODRC's handling of legal mail. Generally, ODRC copies mail that is sent to inmates as a security measure. *See* Adm.Code 5120-9-17(B)(1). There is an exception, however, for legal mail, provided that the mail is "marked with a valid control number provided by [ODRC]." *Compare* Adm.Code 5120-9-17(B)(2) *with* former Adm.Code 5120-9-17(B)(2), 2013-2014 Ohio Monthly Record 2-4751 (effective May 23, 2014). However, under a policy variance for LeCI and some other institutions that was effective through at least September 1, 2025, ODRC began copying legal mail addressed to inmates even if it had a valid control number. In his motion, Clark

requests two forms of relief: (1) an order requiring ODRC to treat all Clark's mail from this court as legal mail and (2) an order prohibiting ODRC from copying Clark's legal mail.

**{¶ 16}** As to Clark's request to enjoin ODRC from copying his legal mail, we decline to do so because our original jurisdiction in a mandamus action does not extend to the issuance of a *prohibitory* injunction. *See State ex rel. Barr v. Wesson*, 2023-Ohio-3028, ¶ 16. Nor is the request ancillary to Clark's mandamus claim. *See id.* (explaining that this court has jurisdiction over claims ancillary to other appropriate relief). Accordingly, this request falls outside our original jurisdiction.

**{¶ 17}** Regarding his request that we order ODRC to treat all his mail as legal correspondence, regardless of whether it contains a control number, Clark asks us to take an approach similar to the one taken by several federal courts. *See, e.g.*, *Rutherford v. Free*, 2025 WL 104347 (S.D.Ohio Jan. 15, 2025); *Williams v. Warden, Chillicothe Corr. Inst.*, 2023 U.S. Dist. LEXIS 232265, *5-6 (S.D.Ohio Dec. 20, 2023) (ordering that it was unnecessary for the federal court to obtain a control number from ODRC because all mail sent by court to inmate was legal mail and had to be treated as such under the holding in *Sallier v. Brooks*, 343 F.3d 868, 875-878 (6th Cir. 2003)); *Vinson v. Brown*, 2024 WL 84149, *2 (S.D.Ohio Jan. 8, 2024) (same). Clark may not, however, request by motion separate relief in mandamus that he has not requested in his mandamus petition. *See State ex rel. Scott v. Toledo Corr. Inst.*, 2024-Ohio-2694, ¶ 14 (a relator cannot receive relief that he does not ask for in his pleading); *see also* S.Ct.Prac.R. 12.02(B)(3) ("All relief sought . . . shall be set forth in the complaint."). We therefore deny Clark's motion to compel ODRC to treat all correspondence that he receives from this court as legal mail.

*2. Clark's motion for leave to file rebuttal evidence*

**{¶ 18}** Clark has also filed a motion for leave to submit rebuttal evidence. S.Ct.Prac.R. 12.06(B) permits a relator to seek leave to file rebuttal evidence within

the time permitted for the filing of a reply brief and requires the relator to attach the rebuttal evidence to the motion. "'Rebutting evidence is [evidence] given to explain, refute, or disprove new facts introduced into evidence by the adverse party; it becomes relevant only to challenge the evidence offered by the opponent, and its scope is limited by such evidence.'" (Bracketed text added in *Powers*.) *State ex rel. Mobley v. Powers*, 2024-Ohio-104, ¶ 11, quoting *State v. McNeill*, 1998-Ohio-293, ¶ 44. "A court has discretion in determining whether to admit rebuttal evidence." *Id*.

**{¶ 19}** Clark's proffered rebuttal evidence consists of an affidavit by him and ten exhibits. While much of Clark's affidavit is argumentative rather than evidentiary, some parts of the affidavit provide rebuttal testimony or authenticate the rebuttal exhibits. Regarding the rebuttal exhibits, only some of them—exhibits A, D, F, G, and H—"explain, refute, or disprove new facts introduced into evidence by" ODRC, *McNeill* at ¶ 44, and we admit those exhibits. We deny Clark's request to admit the other exhibits. We admit the affidavit, but we rely on it only to the extent that it provides rebuttal testimony and authenticates the admitted exhibits.

**B. Clark's public-records requests**

**{¶ 20}** To obtain a writ of mandamus, Clark must show by clear and convincing evidence that he has a clear legal right to the requested public records and that ODRC has a clear legal duty to provide them. *State ex rel. Berry v. Booth*, 2024-Ohio-5774, ¶ 8. When, however, a public-records custodian provides the requested public record in a mandamus case, the mandamus claim is rendered moot. *State ex rel. Brinkman v. Toledo City School Dist. Bd. of Edn.*, 2024-Ohio-5063, ¶ 25.

**{¶ 21}** Clark also requests statutory damages in the amount of $1,000 for each of the five public-records requests he sent by electronic kite. A public-records requester is entitled to statutory damages under Ohio's Public Records Act, R.C. 149.43, if "(1) he transmitted a written public-records request by hand delivery,

electronic submission, or certified mail, (2) he made the request to the public office or person responsible for the requested records, (3) he fairly described the records sought, and (4) the public office failed to comply with an obligation under R.C. 149.43(B)." *State ex rel. Grim v. New Holland*, 2024-Ohio-4822, ¶ 6, citing R.C. 149.43(C)(2).[2]

*1. Clark's November 26, 2024 kite*

**{¶ 22}** In his November 26, 2024, kite, Clark requested copies of the ViaPath Technologies terms of use and the current contract between ODRC and ViaPath. Clark has the "burden to prove, by clear and convincing evidence, that the records that [he] requested exist and are public records maintained by the [public] office." *State ex rel. Cordell v. Paden*, 2019-Ohio-1216, ¶ 8. ODRC maintains that it does not have a legal duty to produce either document to Clark because neither was created, stored, nor maintained by ODRC. Flowers and ODRC's in-house counsel each attest that ODRC did not maintain or possess either the ViaPath terms of use or the current contract between ViaPath and ODRC when Clark requested them. Clark has not submitted any evidence to the contrary. And the fact that Flowers has since procured for Clark a copy of ViaPath's terms of use from an outside source does not change ODRC's legal duty (or lack thereof). Because Clark has failed to show by clear and convincing evidence that ODRC created, stores, or maintains the requested records, we deny Clark's request for a writ of mandamus and his request for statutory damages.

2. Effective April 9, 2025, R.C. 149.43 was amended such that a person committed to the custody of ODRC, such as Clark, is no longer eligible to receive an award of statutory damages under R.C. 149.43(C), and some provisions have been renumbered. *See* 2024 Sub.H.B. No. 265. We apply the version of the statute enacted in 2024 Sub.S.B. No. 29 (effective Oct. 24, 2024).

*2. Clark's December 18, 2024 kite*

**{¶ 23}** In his December 18, 2024 kite, Clark requested body-worn-camera footage from and stationary-surveillance-camera footage of two officers who conducted a search of his prison cell earlier that day.

***a. Body-worn-camera footage***

**{¶ 24}** Despite the limited time in which it is possible to access the latent video images from nonactivated body-worn cameras, Clark argues the latent recordings could have been recovered at the time he made his public-records request. We have already addressed this issue in a case involving a previous request of Clark's. *See State ex rel. Clark v. Dept. of Rehab. & Corr.*, 2025-Ohio-5552. There, Clark similarly requested latent recordings from body-worn cameras regarding incidents with prison staff within 18 hours of the incidents having occurred. ODRC's policy—the same policy at issue here—provided that the body-worn-camera footage is kept by the public office only when it is accessed and preserved within 18 hours of certain "qualifying events." *Id.* at ¶ 3-4, 21. We denied Clark's request, holding that Clark did not meet his burden of showing the requested footage existed at the time of the mandamus action because he failed to show the requested footage was "accessed and preserved" at the time of his request. *See id.* at ¶ 23, citing R.C. 149.43(C)(1)(b) and *State ex rel. Pool v. Sheffield Lake*, 2023-Ohio-1204, ¶ 18.

**{¶ 25}** Clark makes the same argument here—that because he made his request before the latent images would have been overwritten according to ODRC policy, "the footage did exist and could have been recovered." But Clark, again, has not shown that ODRC ever retrieved and preserved the requested body-worn-camera footage. Rather, Clark's own evidence shows that Myers's initial response to Clark pertaining to his December 2024 request indicated the footage was not retrieved and therefore not preserved because Myers determined the cell search was not a qualifying event. Because Clark has not shown that the body-worn-camera

footage currently exists, he is not entitled to a writ ordering ODRC to produce it. *See Clark*, 2025-Ohio-5552, at ¶ 23 ("a writ of mandamus cannot issue to command production of records that do not exist"), citing *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 2008-Ohio-6253, ¶ 27.

**{¶ 26}** We also deny Clark's request for statutory damages. In Clark's previous case, we evinced skepticism that the latent recordings were public records at the time of Clark's request, *see Clark*, 2025-Ohio-5552, at ¶ 21-23, and we denied his request for statutory damages because even "assum[ing] that [the] latent recordings that were never accessed or preserved by the department constitute public records, Clark ha[d] not established that the latent recordings actually existed when Myers received the requests," *id.* at ¶ 24. Here, Myers denied Clark's request for the same reason—because the search of Clark's cell was not a "qualifying event" for "video recall" under ODRC Policy No. 10-SAF-22. *See id.* And Clark has not established that the recordings exist for the same reasons as before—"Myers never specifically admitted that the recordings existed when she denied [the] request, and Clark has provided no evidence to prove that they did," *id.* We thus find that Clark has not met his burden and deny him an award of statutory damages.[3]

***b. Stationary-surveillance-camera footage***

**{¶ 27}** Clark also requests a writ of mandamus ordering ODRC to provide him with a copy of the stationary-surveillance-camera footage on a disc. The Public Records Act permits a requester to choose to have a record produced on any medium which the records custodian "determines that it reasonably can be duplicated *as an integral part of the normal operations of the public office*." (Emphasis added.) R.C. 149.43(B)(6). Accordingly, a prison is not required to provide an inmate with copies of public records on a disc because doing so would

3. While the concurring-and-dissenting opinion devotes considerable effort to relitigating this issue, *see* concurring-and-dissenting opinion, ¶ 52-69, Clark's arguments fail for the same reasons that they failed in his previous lawsuit.

provide the inmate with contraband that could "create security issues, unreasonably interfere with the officials' discharge of their duties, and/or violate prison rules," *State ex rel. Slager v. Trelka*, 2024-Ohio-5125, ¶ 30. Instead, a prison may respond to an inmate's request for a copy of video footage by permitting the inmate to inspect the footage. *State ex rel. Macksyn v. Spencer*, 2025-Ohio-2116, ¶ 28. Clark acknowledges that this is exactly what ODRC did when Myers permitted him to inspect the stationary-surveillance footage on January 15, 2025. Because ODRC did not violate a clear legal duty when it allowed Clark to inspect the stationary-surveillance footage rather than receive the footage on a disc, we deny Clark's request for a writ ordering ODRC to provide him with a copy of the footage on a disc, as well as deny his request for statutory damages.

*3. Clark's December 20, 2024 kite*

**{¶ 28}** After receiving Aramark's food-services contract that was responsive to his December 3, 2024 request, Clark requested a copy of Aramark's submitted proposal for that contract. ODRC contends that the food-services contract it provided to Clark in response to his December 3 request is also responsive to Clark's December 20 request, rendering the latter request moot.

**{¶ 29}** Clark has set forth evidence showing that the requested proposal exists as a separate document. The food-services contract that ODRC argues is responsive to Clark's December 20 request delineates agreed-upon changes to Aramark's submitted proposal. Clark's evidence shows that Myers responded to Clark's December 20 request on December 23, telling him that his request had been forwarded to ODRC's operation support center. Clark also attests that Myers orally advised him on January 15, 2025, that she was still waiting to hear from the operation support center regarding the request. These responses by Myers indicate that Myers treated the requested proposal as a separate document from the food-services contract.

**{¶ 30}** ODRC has not rebutted Clark's showing. Flowers attests that based on his conversations with Myers and a review of his records, Myers determined the food-services contract she provided to Clark on December 19, 2024, was also responsive to Clark's December 20 request, and that Myers verbally communicated this to Clark before she retired. This, however, is not based on Flowers's personal knowledge as required by S.Ct.Prac.R. 12.06(A) but rather hearsay as it was Myers who made the determination regarding the records request and verbally informed Clark of that determination. Additionally, the "records" Flowers refers to in his affidavit as providing the basis for his knowledge are not attached to the affidavit. *See* S.Ct.Prac.R. 12.06(A) ("Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached."). Thus, the evidence that ODRC has submitted to show Clark's request is moot cannot be considered.

**{¶ 31}** Clark has submitted evidence that Aramark's proposal existed as a separate document at some point. And ODRC does not deny that a separate document still exists. Therefore, we grant a limited writ ordering ODRC to either (1) provide Clark with a copy of the proposal submitted by Aramark in response to request for proposal No. CSP900122 and certify to this court that the record was provided to Clark or (2) certify to this court that the requested record does not exist or is not in ODRC's possession. *See State ex rel. Sultaana v. Mansfield Corr. Inst.*, 2023-Ohio-1177, ¶ 43 (granting limited writ of mandamus ordering records custodian "to produce [requested] records or to certify that no such records exist" because of unresolved factual questions); *accord State ex rel. Mobley v. Powers*, 2024-Ohio-104, ¶ 31. We defer our determination of whether Clark is entitled to statutory damages for this request until ODRC has complied with the limited writ. *See, e.g.*, *State ex rel. Brown v. Columbiana Cty. Jail*, 2024-Ohio-4969, ¶ 23 (deferring determination of statutory damages until the respondent's compliance with a limited writ, given unresolved factual issue).

*4. Clark's January 3, 2025 kite*

**{¶ 32}** ODRC argues that Clark's request for "a paper copy of the most recent employee roster records for each LeCI department" is moot because Clark was given a paper copy of the record on January 15, 2025. Clark argues that if ODRC had provided him with the roster, then ODRC would have submitted it as evidence like it did the other produced records. But this flips the applicable burden in a public-records mandamus case, which is on the public-records requester to show that he did not receive the requested record. *See Berry*, 2024-Ohio-5774, at ¶ 8; *accord State ex rel. Ware v. Fankhauser*, 2024-Ohio-5037, ¶ 18-20 (rejecting requester's contention that "'a respondent must attached [sic] copies of the [requested] documents as corroborating evidence' to demonstrate compliance with a public-records request." [Bracketed text in original.]).

**{¶ 33}** Here, Flowers avers that the requested roster was delivered to Clark on January 15, and includes evidence that Clark acknowledged receipt of the roster by marking on a copy of the January 3 kite "Received on 1/15/25." *See Ware* at ¶ 20 (public-records custodian's affidavit describing response to request that included copies of letter, envelope, and mailing history sent to requester sufficient to show requester received requested record). ODRC has also provided examples of Clark's previous requests in which he acknowledged receipt of requested records by writing "received on [x] date" on a copy of the kite. And Clark's own rebuttal evidence demonstrates that on other occasions when he has not received a record, Clark has made a handwritten notation on the kite indicating as much.

**{¶ 34}** Clark accordingly has not proved by clear and convincing evidence that ODRC did not provide him a copy of the requested roster, so we deny a writ of mandamus as to the request for the employee-roster records for each LeCI department. And because ODRC did not violate a clear legal duty when it provided the employee-roster records, we also deny Clark's request for statutory damages.

*5. Clark's January 22, 2025 kite*

**{¶ 35}** ODRC argues that Clark's public-records request for "a paper copy of the record of the current LeCI recreation schedule for each block" was rendered moot when ODRC provided him with the recreation schedule for March 10 through 16. Clark argues this did not satisfy his request because he requested the *current* schedule on January 22, essentially arguing that "current" can refer only to the date on which the request was made.

**{¶ 36}** We conclude that Clark has failed to meet his burden to establish by clear and convincing evidence that ODRC violated a clear legal duty when it sent him the recreation schedule that was current as of the time that it responded to his request. "Current" refers to something "now going on," "at the present time," or "of most recent date." *Webster's New World Dictionary, Third College Edition* (1988). When one person asks for the "current" something in direct conversation, the word causes little difficulty. But things get trickier when the requester and recipient operate in different time frames—that is, when there is a delay between the request and the response. Imagine Harry sends an email at 10:00 a.m. asking about the current weather in Cincinnati. Sally opens it at 2:00 p.m., by which time the morning's sunshine has been replaced by an afternoon thunderstorm. How should Sally respond? Does Harry want Sally to tell him what the weather was at 10:00 a.m., thus being historically accurate as of the time of his email? Or should Sally tell Harry what the weather is as of the time of Sally's response?

**{¶ 37}** We typically resolve this kind of ambiguity based on context, choosing our response based on our understanding of the information the requester seeks. Suppose a prospective buyer is interested in a home. He calls the homeowner and leaves a message asking, "Are there currently any offers on this house?" Before the homeowner listens to the message, he gets an offer on the house from a different prospective buyer. When the homeowner calls back the first buyer, what is he supposed to say? At the time "current" to the first buyer's call, there

were no offers on the house. But that is not what the first buyer wants to know. So the homeowner calls back and informs the first buyer that there *is* currently an offer on the house.

**{¶ 38}** Now consider Clark's request here. Clark asked for the "current LeCI recreation schedule" on January 22, 2025. Flowers did not learn of and respond to the request until the week of March 10, so he sent the schedule for March 10 through 16. While Clark argues that he always wanted the schedule for the week of January 22, in Flowers's mind, Clark would have no need for the schedule for January 20 through 26 because that was almost two months in the past. The context of Clark's request thus made Flowers's sending of the March 10 through 16 recreation schedule a reasonable response to the request.[4]

**{¶ 39}** The concurring-and-dissenting opinion says that the flaw in this logic is that what a public-records custodian thinks about a request and why a public-records requester wants a record "is irrelevant." Concurring-and-dissenting opinion, ¶ 86. That may be true—but it misses the point. How we interpret any communication depends on context. *See* Scalia & Garner, *Reading Law: The Interpretation of Legal Texts*, 56 (2012) ("words are given meaning by their context"). This includes the context of a public-records request. *See State ex rel. Howard v. Chief Inspector's Office*, 2026-Ohio-1428, ¶ 15-18 (explaining how context applies in the interpretation of written communications). And here, the context made Flowers's understanding of Clark's request a reasonable one, so Flowers did not violate a clear legal duty when he reasonably interpreted Clark's request as asking for the recreation schedule that was current as of the time of Flowers's response.

4. The concurring-and-dissenting opinion unwittingly reinforces our point that a reasonable listener assesses the meaning of "current" based on context. That opinion offers an example of a discovery request (for tax records during litigation), *see* concurring-and-dissenting opinion at ¶ 80, in which the context of the request makes clear that the requester is seeking records that are current as of the time of the request.

**{¶ 40}** In arguing to the contrary, Clark cites our decision in another mandamus lawsuit that he filed against prison officials. *See State ex rel. Clark v. Dept. of Rehab. & Corr.*, 2024-Ohio-770. In that case, he requested "up-to-date" paper copies of the commissary price list for each commissary window. *Id.* at ¶ 2. Some months later, the warden's assistant responded by sending Clark the price lists that were in effect at the time that Clark made his request. *Id.* at ¶ 5. Taking the opposite position that he takes in this action, Clark argued that his mandamus claim was not moot because the price lists he received "were already out of date" at the time he received them. *Id.* at ¶ 8. We rejected Clark's argument and concluded that his mandamus claim was moot, finding that the "scope of Clark's public-records request must be understood as of the time that he sent it," and that "[i]f newer price lists exist and Clark wants them, he may make a new request for them." *Id.* at ¶ 7-8. Our decision on this point was lightly reasoned, citing a court-of-claims decision for the proposition that "'[a] requester's right to judicial relief is fixed by the scope of the request pending when the case is filed.'" *Id.* at ¶ 8, quoting *Ryan v. Ashtabula*, 2023-Ohio-621, ¶ 11. But the court of claims' decision dealt with a different legal issue than the one presented in Clark's 2024 case and here. In *Ryan*, a petitioner's complaint made clear that he had withdrawn a public-records request before the complaint was filed; thus, because "the right to judicial relief is fixed by the scope of the request pending when the case is filed," he could not obtain relief in mandamus for a request that was no longer pending when he filed his complaint. *Id.* at ¶ 11-12.

**{¶ 41}** In latching onto our decision in Clark's 2024 case as "binding precedent," concurring-and-dissenting opinion at ¶ 79, the concurring-and-dissenting opinion overlooks the applicable burdens in a mandamus case. It was Clark's burden in the 2024 case to demonstrate by clear and convincing evidence that prison officials had a clear legal duty to provide him with more recent price lists (if they existed), rather than the lists that were in effect at the time of his

request. *State ex rel. Adkins v. Cole*, 2025-Ohio-1026, ¶ 12. Because ODRC's understanding of the request Clark made in his 2024 case was reasonable, it did not violate a legal duty based on its response to that request. And just like here, if ODRC misconstrued which records Clark was really looking for, he was free to follow up and "make a new request for them." *Clark*, 2024-Ohio-770, at ¶ 7-8.

**{¶ 42}** Because Clark has failed to establish by clear and convincing evidence that ODRC had a clear legal duty to send him an out-of-date recreation schedule rather than the one it provided to him, we deny as moot Clark's request for a writ of mandamus as to his January 22, 2025 public-records request. And because ODRC violated no clear legal duty in producing the recreation schedule for the week of March 10, we deny Clark's request for statutory damages.

## III. CONCLUSION

**{¶ 43}** We deny Clark's motion to compel ODRC to treat all correspondence that he receives from this court as legal mail. We grant in part and deny in part Clark's motion for leave to file rebuttal evidence: we admit Clark's rebuttal affidavit to the extent it provides rebuttal testimony and authenticates the admitted rebuttal exhibits, and we admit Clark's rebuttal exhibits A, D, F, G, and H, but we deny Clark's request to admit his other rebuttal exhibits.

**{¶ 44}** Regarding Clark's request for a writ of mandamus, we deny the writ as to his public-records requests sent on November 26 and December 18, 2024, and January 3 and 22, 2025. We grant a limited writ as to Clark's December 20, 2024 public-records request, ordering ODRC to either (1) provide Clark with a copy of the requested proposal submitted by Aramark in response to request for proposal No. CSP900122 and certify to this court that the record was provided to Clark or (2) certify to this court that the record does not exist or is not in ODRC's possession. We defer our determination of statutory damages regarding the December 20 request until ODRC has complied with the limited writ. But we deny Clark's request for statutory damages as to his other four requests.

Writ granted in part
and denied in part.

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**KENNEDY, C.J., joined by BRUNNER, J., concurring in part and dissenting in part.**

**{¶ 45}** "The separation-of-powers doctrine implicitly arises from our tripartite democratic form of government and recognizes that the executive, legislative, and judicial branches of our government have their own unique powers and duties that are separate and apart from the others." *State v. Thompson*, 2001-Ohio-1288, ¶ 6. "'In the preservation of these distinctions is seen, by many able jurists, the preservation of all the rights, civil and political, of the individual, secured by our free form of government . . . .'" *State ex rel. Bray v. Russell*, 2000-Ohio-116, ¶ 13, quoting *Zanesville v. Zanesville Tel. & Tel. Co*., 63 Ohio St. 442, 451 (1900). That is, "[t]he reason the legislative, executive, and judicial powers are separate and balanced is to protect the people, not to protect the various branches of government." *Id.*

**{¶ 46}** "One of the judiciary's most vital roles is to safeguard the rights of the people by limiting government overreach." *State ex rel. Mobley v. Franklin Cty. Bd. of Commrs.*, 2026-Ohio-2589, ¶ 18 (Kennedy, C.J., concurring in part and dissenting in part). Every Ohio judge takes an oath to support the state and federal Constitutions, *see* Ohio Const., art. XV, § 7, and that obliges the members of the judiciary to respect the limits on the judicial power granted by Article IV, Section 1 of the Ohio Constitution and to insist that the other branches of government respect the limits on their own powers. "By upholding these obligations, judges make sure that the people's rights go untrammeled by any of the three branches." *Mobley* at ¶ 18 (Kennedy, C.J., concurring in part and dissenting in part).

**{¶ 47}** These principles do not vanish when the public's right to access government records under Ohio's Public Records Act, R.C. 149.43, is at issue.

Article II, Section 1 of the Ohio Constitution confers all legislative power of the State of Ohio on the General Assembly, and the General Assembly may "enact any law that does not conflict with the Ohio or United States Constitution," *Kaminski v. Metal & Wire Prods. Co.*, 2010-Ohio-1027, ¶ 60. "So when the General Assembly creates a right for the people that does not conflict with the state or federal Constitution—as it has done with the right to access public records—it is our duty to protect this right, regardless of whether we agree with the underlying policy supporting it." *Mobley* at ¶ 19 (Kennedy, C.J., concurring in part and dissenting in part).

**{¶ 48}** With these fundamental principles in mind, I agree with the majority opinion—with two major exceptions.

**{¶ 49}** First, the majority is wrong to deny relator Thomas Clark's request for statutory damages based on the failure of respondent, the Ohio Department of Rehabilitation and Correction ("ODRC"), to allow Clark to inspect body-worn-camera footage related to a search of his cell. ODRC violated the Public Records Act[5] by failing to appropriately respond to Clark's request to inspect that footage and by failing to preserve and allow Clark to view "latent recordings"—that is, low-resolution audio and video recordings that are automatically made by body-worn cameras while the cameras are switched on but are not actively recording, *see State ex rel. Clark v. Dept. of Rehab. & Corr.*, 2025-Ohio-5552, ¶ 33, 44 (Kennedy, C.J., concurring in part and dissenting in part). I would award Clark $1,000 in statutory damages for ODRC's violation of the Public Records Act in this regard.

**{¶ 50}** Second, the majority is equally wrong in denying Clark a writ of mandamus compelling ODRC to provide him with a copy of the recreation schedule that includes January 22, 2025. Clark requested the "current [Lebanon Correctional

5. The General Assembly has recently amended R.C. 149.43, most notably in 2024 Sub.H.B. No. 265 (effective Apr. 9, 2025), and some provisions have been renumbered. This opinion applies the version of the statute enacted in 2024 Sub.S.B. No. 29 (effective Oct. 24, 2024).

Institution ("LeCI")] recreation schedule" on January 22, 2025, not a future recreation schedule that would be current when the records custodian finally got around to responding to Clark's request nearly two months later. Because ODRC violated the Public Records Act by failing to provide Clark with the record he requested, I would grant a writ of mandamus compelling ODRC's production of that record to Clark and would award Clark an additional $1,000 in statutory damages.

**{¶ 51}** For these reasons, I concur in part and dissent in part.

**Clark's Request to Inspect Latent Recordings**

**{¶ 52}** On December 18, 2024, Clark sent an electronic kite[6] to Ellen Myers, who was then the warden's administrative assistant and the public-information officer at LeCI. In his kite, Clark said that his cell had been searched and "ransacked" earlier that day in retaliation for recent informal complaints he had made and legal claims he had filed. The kite stated:

> Please preserve for the record, and allow me to inspect, and make a copy on a disc, the following records:
>
> 1. The [body-worn-camera] footage of the two officers that searched my cell on 12/18/24 . . . .
>
> Inspector Cole is Cc'd on this message to ensure the [body-worn-camera] recordings are timely preserved.
>
> I will of course pay for the records at cost. Thank you.

Clark asked to be allowed to inspect and to obtain a copy of the recordings from the correction officers' body-worn cameras, and he indicated that the recordings

6. "A kite is a type of written correspondence between an inmate and prison staff." *State ex rel. Griffin v. Szoke*, 2023-Ohio-3096, ¶ 3.

could be recovered using the "video recall" function discussed in ODRC Policy No. 10-SAF-22(VI)(K)(4).

**{¶ 53}** Myers denied the request, saying that no "qualifying event" had occurred that would have required the correction officers to hit the record button on their body-worn cameras. When a "qualifying event" occurs, such as an emergency call for assistance, responding ODRC employees who have been issued a body-worn camera must hit the record button on the camera to actively record the event. *See* ODRC Policy No. 10-SAF-22(VI)(C) (effective Aug. 1, 2023).[7] According to Myers, then, the correction officers never hit the record button on their body-worn cameras to begin actively recording their search of Clark's cell on December 18, 2024.

**{¶ 54}** That does not mean that recordings did not exist at the time of Clark's request. ODRC's body-worn cameras also record *passively*, automatically making low-resolution audio and video recordings whenever the camera is powered on, unless an employee turns a camera off entirely or places the camera in sleep mode for enumerated situations outlined in the policy (e.g., using the restroom). *See* ODRC Policy No. 10-SAF-22(VI)(E), (G), (H), and (K); *see also Clark*, 2025-Ohio-5552, at ¶ 44 (Kennedy, C.J., concurring in part and dissenting in part). The body-worn cameras have enough internal-storage capacity to record for 18 hours, after which new footage overwrites old footage. *See* ODRC Policy No. 10-SAF-22(VI)(K)(1); *Clark*, 2025-Ohio-5552, at ¶ 45 (Kennedy, C.J., concurring in part and dissenting in part).

**{¶ 55}** Therefore, for a latent recording of an event captured on a body-worn camera to be preserved, the recording must be retrieved within an 18-hour window that begins when the event occurs and ends after the camera has been on and either

7. Clark submitted ODRC Policy No. 10-SAF-22, effective August 1, 2023, into evidence. That policy was amended effective February 16, 2026. ODRC does not object to the applicability of the August 2023 policy here, so this opinion cites that version of the policy.

actively or passively recording for 18 hours after the event. *Clark*, 2025-Ohio-5552, at ¶ 45 (Kennedy, C.J., concurring in part and dissenting in part). But if the camera is powered off before the recording is overwritten, the recording may be retrieved at any time, presumably for as long as the camera remains powered off. *See* ODRC Policy No. 10-SAF-22(VI)(K)(3); *Clark*, 2025-Ohio-5552, at ¶ 45 (Kennedy, C.J., concurring in part and dissenting in part).

**{¶ 56}** It is fair to assume that ODRC has long since overwritten the latent recordings that Clark asked to inspect and obtain a copy of, such that Clark's request for a writ of mandamus compelling the production of those recordings is now moot. There is no duty under R.C. 149.43 for a public-records custodian to create or provide records that no longer exist. *See State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 2008-Ohio-6253, ¶ 27. But that does not end the analysis. Clark may be entitled to statutory damages as a remedy for ODRC's failure to preserve the latent recordings.

**{¶ 57}** Statutory damages are available 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)]" and (1) the written request was transmitted by hand delivery, electronic submission, or certified mail, (2) the request fairly described the public record being requested, and (3) the request was sent to the public office or person responsible for the public record. R.C. 149.43(C)(2).

**{¶ 58}** First, Clark submitted his request by electronic kite, which constitutes an electronic transmission for purposes of R.C. 149.43(C)(2), *State ex rel. Clark v. Dept. of Rehab. & Corr.*, 2024-Ohio-770, ¶ 11. Second, he fairly described the records sought: Clark specifically asked to inspect and obtain a copy of the latent recordings made by the correction officers' body-worn cameras, pointing to the "video recall" function discussed in ODRC Policy No. 10-SAF-22(VI)(K)(4). Myers relied on that same policy in denying the request, so she knew

what Clark was seeking. In any case, ODRC does not argue that Clark did not fairly describe the records sought. Third, no one disputes that Myers was an appropriate person to whom to submit the request for the body-worn-camera footage.

**{¶ 59}** What remains is the question whether ODRC violated R.C. 149.43(B) when it responded to Clark's request to inspect and obtain a copy of the latent recordings from the body-worn cameras.

**{¶ 60}** Initially, the majority questions whether the latent recordings were ever public records, suggesting that latent recordings are not records "kept" by a public office, majority opinion, ¶ 24. The majority then cites *Clark*, 2025-Ohio-5552, which says that "[l]atent recordings that exist for a limited time in the memory of an electronic device but that are not otherwise maintained or preserved by a public office would hardly seem to qualify as something that 'continue[d]' to be in a public office's 'possession . . . by conscious or purposive policy' " (second bracketed text and ellipsis in original), *id.* at ¶ 21, quoting *Webster's Third New International Dictionary* (1986).

**{¶ 61}** "Public record" means "records kept by any public office," R.C. 149.43(A)(1), and "records" include "any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in [R.C. 1306.01], created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office," R.C. 149.011(G). And for purposes of the Public Records Act, "'[k]ept' is the past participle of 'keep,' which in this context means 'preserve,' 'maintain,' 'hold,' 'detain,' or 'retain or continue to have in one's possession or power esp. by conscious or purposive policy.'" *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Cincinnati Bd. of Edn.*, 2003-Ohio-2260, ¶ 11, quoting *Webster's Third New International Dictionary* (1986).

**{¶ 62}** A latent recording on one of ODRC's body-worn cameras fits squarely within these definitions. A latent recording is an electronic record stored on a device belonging to ODRC that documents ODRC's activities—i.e., the actions of correction officers and incarcerated people. The recordings remain in ODRC's possession for at least 18 hours. ODRC consciously and purposefully retains these recordings so that it may access them in the future, if it decides to do so. Latent recordings are therefore public records kept by ODRC until they are overwritten.

**{¶ 63}** Instead of holding that the latent recordings could never be public records, the majority decides that Clark has failed to prove that the latent recordings existed when he made his public-records request. The majority's analysis is a bit threadbare. First, it says that "Myers denied Clark's request . . . because the search of Clark's cell was not a 'qualifying event' for 'video recall' under ODRC Policy No. 10-SAF-22." Majority opinion at ¶ 26. However, as that policy explains, the video-recall function may also be used for reasons not associated with a qualifying event. *See* ODRC Policy No. 10-SAF-22(VI)(K)(4). "Video recall" is the retrieval of latent recordings. ODRC Policy No. 10-SAF-22(VI)(K). And latent recordings exist regardless of whether a qualifying event occurred. The existence of a qualifying event is therefore irrelevant to the analysis here.

**{¶ 64}** Second, the majority notes that Myers never specifically admitted that the requested recordings existed. *See* majority opinion at ¶ 26. That by itself is not dispositive. Myers also never said that no latent recordings existed; she simply indicated that there were no active recordings available for production as a public record.

**{¶ 65}** Importantly, without objection by ODRC, Clark submitted ODRC Policy No. 10-SAF-22 into evidence. That policy describes how the body-worn cameras work, and it expressly says that ODRC can retrieve 18 hours' worth of latent recordings. ODRC Policy No. 10-SAF-22(VI)(K)(1). Eighteen hours had

not elapsed from the time correction officers searched Clark's cell to the time he made his public-records request. Further, in its merit brief, ODRC states that Myers acted "within her discretion to not authorize a video recall of the cell shakedown and preservation of the same." ODRC therefore admits that the latent recordings that Clark asked to inspect and obtain a copy of existed when Myers exercised her "discretion" not to preserve them.

**{¶ 66}** So when Clark made his request to inspect and obtain a copy of the body-worn-camera footage of the correction officers who searched his cell on December 18, 2024, those recordings existed and were public records. At the time of Clark's request, the recordings were between seven-and-a-half and ten-and-a-half hours old—well within the 18-hour period during which the latent recordings could be retrieved. Myers therefore had a duty to promptly prepare the requested records for Clark's inspection, a duty that necessarily required her to preserve the requested recordings. Instead, she denied Clark's request. That denial constituted a violation of the Public Records Act.

**{¶ 67}** "Upon request by any person and subject to [an exception not relevant here], all public records responsive to [a public-records] request shall be promptly prepared and made available for inspection to the requester at all reasonable times during regular business hours." R.C. 149.43(B)(1). Myers therefore had a duty to permit Clark to view the body-worn-camera footage when he made a request to do so. She failed to comply with that duty.

**{¶ 68}** In addition, R.C. 149.43(B)(3) states that "[i]f a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied." Myers gave Clark an explanation for the denial of his request, but she did not point to any legal authority permitting her to deny the request. Although she cited ODRC Policy No. 10-SAF-22 in her response to Clark, she never asserted that the policy gave her *legal*

authority to deny his request. Instead, she used the policy to support the *factual* proposition that no qualifying event occurred on December 18 requiring activation of the correction officers' body-worn cameras during the search of Clark's cell. The policy says nothing about whether the latent recordings were subject to release.

**{¶ 69}** By failing to let Clark inspect the latent recordings and failing to provide a sufficient response backed by legal authority when she denied Clark's request to inspect and obtain a copy of the latent recordings, Myers failed to comply with an obligation imposed by R.C. 149.43(B). *See State ex rel. Ayers v. Sackett*, 2025-Ohio-2115, ¶ 27, 29. Statutory damages are therefore available to Clark, and I would award him $1,000. *See* R.C. 149.43(C)(1) and (2).

**Logical Consequences**

**{¶ 70}** As noted above, in *Clark*, this court suggested that latent recordings are never public records, because they "exist for a brief period in the temporary memory of an electronic device but . . . are not maintained or otherwise kept by a public office." 2025-Ohio-5552 at ¶ 22. The court reasoned that records are not "kept" by a public office unless there is some conscious act to keep them. *See id.* at ¶ 23. That reasoning essentially allows a public office to pick and choose which records are public records simply by later deciding which temporary records to keep.

**{¶ 71}** For example, this court has held that law-enforcement "dash-cam" recordings are public records. *State ex rel. Cincinnati Enquirer v. Dept. of Pub. Safety*, 2016-Ohio-7987, ¶ 34. However, under this court's reasoning in *Clark*, 2025-Ohio-5552, a law-enforcement agency could make dash-cam recordings subject to a short records-retention schedule; if that schedule is short enough to be deemed temporary, then those recordings are not public records. Yet if that same agency decides to preserve those recordings beyond the short retention period, it has essentially selected those records to be public records.

**{¶ 72}** But that is not the statutory scheme the legislature enacted. Instead, the General Assembly, the arbiter of public policy, *see Sutton v. Tomco Machining, Inc.*, 2011-Ohio-2723, ¶ 20, has created a statutory scheme in which public records are freely available upon request by any person, including incarcerated people. Yet we see a part of the executive branch—ODRC and its employees—consistently disregard its duty under that statutory scheme to respond appropriately to public-records requests from incarcerated people, ultimately leading to this court's awarding statutory damages to those people. *See, e.g.*, *State ex rel. Teagarden v. Dept. of Rehab. & Corr.*, 2026-Ohio-567, ¶ 40 (awarding incarcerated person $5,000 in statutory damages); *State ex rel. Adkins v. Cole*, 2025-Ohio-558, ¶ 16-19 (awarding incarcerated person $1,000 in statutory damages); *State ex rel. Clark v. Dept. of Rehab. & Corr.*, 2025-Ohio-895, ¶ 15-18 (awarding incarcerated person $1,000 in statutory damages); *State ex rel. Brown v. Sackett*, 2025-Ohio-2080, ¶ 24 (awarding incarcerated person $1,000 in statutory damages); *State ex rel. Barr v. Wesson*, 2024-Ohio-596, ¶ 6-7 (awarding incarcerated person $1,000 in statutory damages); *Clark*, 2024-Ohio-770, at ¶ 10-16 (awarding incarcerated person $1,000 in statutory damages); *State ex rel. Ware v. Dept. of Rehab. & Corr.*, 2024-Ohio-1015, ¶ 35-37 (awarding incarcerated person $1,000 in statutory damages); *State ex rel. Griffin v. Sehlmeyer*, 2021-Ohio-1419, ¶ 22-23 (awarding incarcerated person $1,000 in statutory damages). Imagine if ODRC could choose which records are public records and override the statutory scheme that the General Assembly has created: the logical consequence of this court's holding in *Clark*, 2025-Ohio-5552, is that it can.

**{¶ 73}** Under the separation-of-powers doctrine, it is incumbent upon the judiciary "to determine the . . . validity of acts by other branches of the government and to ensure that the boundaries between branches remain intact," *State v. Bodyke*, 2010-Ohio-2424, ¶ 46 (lead opinion). That means upholding the will of the General Assembly from encroachment by the executive branch. Under R.C. 149.43, latent

recordings are public records. This court is therefore obliged to ensure that ODRC produces those public records for inspection upon request of any person, including an incarcerated one.

**Clark's Request for the Current Recreation Schedule**

**{¶ 74}** Next, the majority concludes that when Clark requested a copy of the "current" recreation schedule for LeCI in January 2025, the public-records custodian could have reasonably concluded that Clark wanted the version of the recreation schedule that *would be current* when the custodian finally got around to fulfilling the public-records request in March 2025. I disagree.

**{¶ 75}** On January 22, 2025, Clark sent an electronic kite to the recreation department at LeCI, where he was housed, stating: "Please provide me with a paper copy of the record of the *current* LeCI recreation schedule for each block. I will of course pay for the copy at cost. Thank you." (Emphasis added.) Ten minutes later, an ODRC staff member replied: "Each block gets 1 hour of recreation per day on a rotating time basis. All regular population inmates have the ability to sign up for recreation programs to receive passes at other times." Clark did not receive another response to his public-records request until March 14, 2025—almost two months after he sent his request—when LeCI's public-records coordinator, Robert Flowers, provided Clark with a copy of the then-current recreation schedule for the week of March 10 through 16, 2025.

**{¶ 76}** I would grant a writ of mandamus compelling ODRC to provide Clark with a copy of the recreation schedule that includes January 22, 2025, because on that date, Clark requested a copy of the "current" recreation schedule—not a schedule that would be created after he filed his petition for a writ of mandamus.

**{¶ 77}** In *Clark*, this court said, "[T]he scope of [a requester's] public-records request must be understood at the time [the requester] sent it." 2024-Ohio-770 at ¶ 8. This court then explained that a request for "'up-to-date'" copies of the price list for each commissary window at LeCI was really a request for the versions

of the price lists that were "current" when the request was made. *Id.* It follows therefore that we look at the time of the request to determine which record the public-records custodian must provide to the requester. After all, this court has stated that a public-records requester is not entitled to records that are created after the date of his or her request. *See State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. & Corr.*, 2018-Ohio-5133, ¶ 29-30 (lead opinion); *id.* at ¶ 49 (Fischer, J., concurring in part and dissenting in part); *State ex rel. Taxpayers Coalition v. Lakewood*, 1999-Ohio-114, ¶ 29.

**{¶ 78}** Therefore, when Clark asked for a copy of the "current" version of the LeCI recreation schedule in his January 22, 2025 public-records request, ODRC had an obligation to give him a copy of the schedule that was current as of the time of the request, not one that would be created in the future.

**{¶ 79}** The majority opinion says that it was reasonable for Flowers to provide Clark with a copy of the March 2025 recreation schedule because when he fulfilled Clark's public-records request, that was the *current* recreation schedule. But when Flowers fulfilled Clark's request, this court's decision in *Clark*, 2024-Ohio-770, had been the law of this State for almost a year. That case was, and still is, binding precedent. It was therefore unreasonable for Flowers to provide Clark with a different recreation schedule than the one he requested.

**{¶ 80}** Because the law is not on its side, the majority opinion resorts to reasoning by analogy. The problem is that all its analogies involve the state of things, such as the weather, not requests for specific documents. A more apt analogy would be one that involves discovery in litigation: if, in December 2025, a plaintiff requested the defendant's "current year's tax return," the defendant plainly could not avoid his obligation to produce the requested tax document by asserting two months later that his 2026 tax return does not yet exist.

**{¶ 81}** The majority opinion argues that in interpreting the meaning of a public-records request, we should look to the context in which the request was

made. I wrote more extensively about a similar argument in *State ex rel. Howard v. Chief Inspector's Office*, 2026-Ohio-1428, ¶ 30-117 (Kennedy, C.J., concurring in part and dissenting in part). As I stated in that case, in interpreting texts such as statutes, contracts, and public-records requests, we first look for meaning within the four corners of the document itself. *See id.* at ¶ 91 (Kennedy, C.J., concurring in part and dissenting in part). And while we do need to understand the context in which words in that document are used, *see id.* at ¶ 92 (Kennedy, C.J., concurring in part and dissenting in part), when language is plain and unambiguous, we do not consider extrinsic information about the document to discern the meaning of its text, *id.* at ¶ 95-97 (Kennedy, C.J., concurring in part and dissenting in part). But that is exactly what the majority opinion does: it takes an unambiguous document—Clark's January 22, 2025 public-records request asking for a copy of the "current" LeCI recreation schedule—and looks at extrinsic information (what Flowers maybe thought) to create ambiguity in the text of the document. However, that gets things backwards; we do not go beyond the four corners of the document containing the text to determine whether the text means something different than what its words convey.

**{¶ 82}** But even if we were to assume that Clark's January 22, 2025 public-records request for a copy of the "current" LeCI recreation schedule was somehow ambiguous, the majority opinion's context argument still misses the mark. "Current" means "occurring in or belonging to the present time," "presently elapsing," and "most recent." *Webster's Third New International Dictionary* (2002). Clark asked for a specific document—the recreation schedule that existed on January 22, 2025—the date he made his public-records request. And Clark knew that he was requesting the January 22, 2025 recreation schedule: he was the relator in *Clark*, 2024-Ohio-770, and was undoubtedly aware of our holding in that case. There, we said that when Clark requested paper copies of the "'up-to-date'" price lists for the LeCI commissary windows, ODRC properly provided him the

price-list copies that were "current" as of the date of the request. *Id.* at ¶ 8. Clark therefore knew that by requesting a copy of the "current" LeCI recreation schedule on January 22, 2025, he was asking for the version of the schedule that was "most recent" as of January 22, 2025. So even if we considered the context of Clark's public-records request, it is still manifest that he sought the version of the recreation schedule that was current at the time of his request.

**{¶ 83}** Although the majority asserts that by its reasoning it simply has held Clark to his burden of proof in this case and in *Clark*, 2024-Ohio-770, it instead erroneously creates a reasonable-records-custodian standard, focusing on what it believes Flowers must have been thinking when he responded to Clark's public-records request. But the question to be resolved by our analysis is whether the public-records request that Clark made has been fulfilled, not whether Flowers reasonably thought he had fulfilled it. R.C. 149.43(B)(1) requires the public-records custodian to produce to the requester records that are "responsive to the request," so we must look at what the request says, not what the records custodian thought it said. And importantly, we do not condition success in a public-records mandamus action on a showing by the requester that the records custodian acted unreasonably or abused his or her discretion in denying the request. So contrary to the majority's assertion, Clark did not have to produce clear and convincing evidence that Flowers acted unreasonably. This is in stark contrast to a mandamus case involving an election matter, for example, in which we specifically ask whether the board of elections engaged in fraud, corruption, or an abuse of discretion or acted in clear disregard of the law. *See State ex rel. Ferrara v. Trumbull Cty. Bd. of Elections*, 2021-Ohio-3156, ¶ 7.

**{¶ 84}** Disguised as an application of the relevant burdens of proof, the majority's heads-I-win-tails-you-lose approach is ultimately unpersuasive because it so patently lends itself to results-oriented decision-making. It is strikingly arbitrary to say that "current" meant "at the time of the request" in *Clark*, 2024-

Ohio-770, but that it means "at the time of the response" in this case. By giving the records custodian the benefit of the doubt, the majority ultimately tips the scales in favor of the custodian in all public-records cases.

**{¶ 85}** However, the Public Records Act does not require us to look clairvoyantly into a public-records custodian's thoughts. We do not need to guess what the custodian was thinking when he or she fulfilled a public-records request. Nor do we ask what a reasonable custodian would think. (That is in stark contrast to R.C. 149.43(C)(2)(a) and (b), which expressly allow the court to reduce or deny statutory damages based on what a well-informed custodian reasonably would have believed when responding to a public-records request.) We simply ask, what did the requester seek and did the custodian provide it? In that way, we avoid subjective determinations of reasonableness and the temptation to pursue outcomes outside the law.

**{¶ 86}** A further flaw in the majority opinion's reasoning is that it essentially allows a public-records custodian to question why an incarcerated person would ever want an out-of-date recreation schedule. But the reason why a public-records requester wants a record is irrelevant. *See Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, 2020-Ohio-5371, ¶ 33, fn. 4. It is improper to assume, as the majority does, that "Clark would have no need for the schedule for January 20 through 26 because that was almost two months in the past" from the time Flowers fulfilled the request, majority opinion at ¶ 38. We have no way of knowing why Clark wanted the specific document that he asked for, and under the Public Records Act, his reason for wanting the document is irrelevant.

**{¶ 87}** The majority is therefore wrong in concluding that Clark is not entitled to a writ of mandamus ordering ODRC to provide Clark with a copy of the recreation schedule that includes January 22, 2025. Because Clark's public-records request was transmitted by electronic submission, fairly described the public record being requested, and was sent to the public office or person responsible for the

public record, and because ODRC violated an obligation imposed by R.C. 149.43(B), I would award Clark an additional $1,000 in statutory damages. *See* R.C. 149.43(C)(1) and (2).

**Conclusion**

**{¶ 88}** It has been said that "[a] society should be judged not by how it treats its outstanding citizens, but by the way it treats its criminals." Ilya Vinitsky, *Dostoevsky Misprisioned: "The House of the Dead" and American Prison Literature* (Dec. 23, 2019), https://lareviewofbooks.org/article/dostoyevsky-misprisioned-the-house-of-the-dead-and-american-prison-literature/#_ftnref3 (accessed Mar. 3, 2026) [https://perma.cc/DF2L-3L4F]. But in Ohio, there seems to be two standards for responding to public-records requests: one for incarcerated people and one for everyone else. However, "the General Assembly, as a matter of fair and equitable public policy, has acted to preserve the right of access to *all citizens* of this state." (Emphasis in original.) *State ex rel. Berry v. Booth*, 2024-Ohio-5774, ¶ 148 (Kennedy, C.J., concurring in part and dissenting in part). We should respect that public-policy decision, not thwart it.

**{¶ 89}** I would therefore grant a writ of mandamus compelling ODRC to provide Clark with a copy of the recreation schedule that includes January 22, 2025. And because ODRC violated R.C. 149.43(B)(1) by denying Clark the opportunity to inspect the latent body-worn-camera footage that he requested, by failing to respond appropriately to that public-records request, and by failing to provide the requested recreation schedule, Clark is entitled to statutory damages related to his December 18, 2024, and January 22, 2025, public-records requests, in the total amount of $2,000.

**{¶ 90}** Therefore, I concur in part and dissent in part.

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Thomas Clark, pro se.

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Attorney General, for respondent.

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