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SLIP OPINION NO. 2026-OHIO-3770

THE STATE EX REL. ELLIS v. DEPARTMENT OF REHABILITATION AND CORRECTION ET AL.

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Mandamus—Public-records requests—R.C. 149.43—Nonexistent records are not public records, and a public-records requester’s failure to prove existence of requested public records means that the requester cannot show a clear legal right to relief or that the public office failed to comply with an obligation under Public Records Act—Relator failed to prove that department-specific policies and schedules existed—Private entities are presumed not to be subject to Public Records Act, and relator failed to rebut that presumption as to private food-services company—Writ and relator’s requests for statutory damages and court costs denied.

(No. 2024-1491—Submitted June 24, 2025—Decided September 29, 2026.)

IN MANDAMUS.

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., concurred in part and dissented in part and would award relator \$1,000 in statutory damages as to the policies produced after the complaint was filed.

DEWINE, J.

{¶ 1} Over the course of ten days, L'Ddaryl Ellis fired off 73 requests to various offices and persons asking for “records-retention schedules,” “records-retention policies,” and “public-records policies” for 2023 or 2024. Not satisfied with the responses he received, Ellis brought this original action in mandamus to compel respondents to provide copies of the records he sought and to pay \$73,000 in statutory damages, as well as court costs.

{¶ 2} After Ellis filed his complaint, he was provided with documents setting forth general public-records and records-retention policies for Ohio prison facilities. However, in his briefing before this court, Ellis claims that he was looking for different records. Because Ellis has not shown that the documents he seeks exist, we deny Ellis’s mandamus claims and his requests for statutory damages and court costs. We also deny several motions that Ellis filed during the course of this litigation.

I. BACKGROUND

{¶ 3} At the time of his public-records requests, L'Ddaryl Ellis was imprisoned at the Northeast Ohio Correctional Center (“NEOCC”), a prison managed by a private company, CoreCivic. In 2024, over the span of several days, Ellis sent a total of 73 public-records requests seeking records-retention schedules, records-retention policies, and public-records policies. The requests were delivered to various employees and offices within the Ohio Department of Rehabilitation and

Correction (“ODRC”) and NEOCC, as well as to a purported employee of the Bureau of Records Management and an employee of Trinity Services Group, Inc. (“Trinity”), a private company that provides food services to NEOCC.

{¶ 4} For example, Ellis sent the following request to what he identified in his complaint as the “Laundry Department/Office” at NEOCC:

I am requesting electronically for a copy of as follow[s]: (1) 2024 records retention, (2) 2024 records retention policy, (3) 2024 public records policy be sent to me electronically or by certified mail for proof I received it. Thank you.

Similar requests went to the “the Dental Care Department/Office,” “the Religious Services Department/Office,” “the Mental Health Department/Office,” “the Commissary Department/Office,” “the Education Department,” and numerous others.

{¶ 5} Ellis later filed this lawsuit, alleging that he did not receive the requested documents. He named as respondents ODRC, CoreCivic, NEOCC, Trinity, and numerous employees of those organizations. He seeks a writ of mandamus compelling production of the documents, \$73,000 in statutory damages, and court costs.

{¶ 6} All respondents moved to dismiss. We dismissed the claims against the individual employees of NEOCC but declined to dismiss the claims against the other respondents.¹ 2025-Ohio-156; 2025-Ohio-97. We denied Ellis’s motion for

1. The NEOCC employees, each of whom was dismissed as a respondent from this case, are (as named in the complaint) H. Thomas, J. Frazzini, L. Austin, Z. Weaver, Mr. Burch, Y. Payne, S. Hagy, Tyler Massey, K. Gilbert Jr., L. Burrichter, M. Silvernail, Abbey Spain, T. Hight, John C., A. Hiner, Ms. Fredenburg, Ms. McGowen, N. Grant Askew, C. McCollum, G. Johnson, J. Rosado, Mr. Woods, M. Budaker, Thomas Smith, K. Granchie, V. Haley, Ms. Shinn, and Mr. Fryfogle. The remaining parties that were not dismissed include NEOCC; CoreCivic; ODRC and its employees John Grzincic and M. Roche; E. Shepherd, an employee of the Bureau of Classification within

leave to file a revised complaint and granted an alternative writ, setting the schedule for the submission of evidence and briefs. 2025-Ohio-156.

{¶ 7} ODRC and CoreCivic subsequently provided Ellis with documents that they believed were responsive to his requests. Ellis was sent (1) ODRC Policy No. 07-ORD-01, which establishes records-management policies for ODRC, (2) ODRC Policy No. 07-ORD-02, which establishes public-records policies for ODRC, and (3) ODRC's records-retention schedule. In an affidavit filed in this litigation, CoreCivic explained that pursuant to its contract with ODRC, NEOCC complies with ODRC policies, including its public-records and records-retention policies.

{¶ 8} Although the records provided set forth the applicable public-records and records-retention policies for ODRC and NEOCC, thus encompassing the employees of and offices within those entities to which Ellis directed his requests, Ellis maintains that the records he received are not the records that he sought. Rather, Ellis suggests that he was looking for distinct records policies and retention schedules for each of the different offices or departments (e.g., the laundry department/office) to which he directed his requests in the various organizations. In his briefing to this court, Ellis writes that respondents

made no supported argument that the ODRC retention schedule and policy or the ODRC public records policy, which were provided to [Ellis] are one and the same as the particular records [Ellis] requested from each individual requestee. Each of the requests were addressed to several departments, who retained different records which relate to such particular departments (say, a medical department retains medical records; whereas an education department retains student records), and

ODRC; T. Thomas, a purported employee of the Bureau of Records Management; and Trinity and its employee R. Ward.

this Court is not to just presume that what was provided to [Ellis] is responsive to his requests which were addressed to other requestees which are not, themselves, the ODRC.

{¶ 9} After respondents submitted their merit briefs, Ellis filed a motion for a temporary restraining order or preliminary injunction under Civ.R. 65 against ODRC and CoreCivic and, separately, a motion for default judgment against CoreCivic and NEOCC.

II. ANALYSIS

{¶ 10} Ohio’s Public Records Act, R.C. 149.43,² provides that “upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time.” R.C. 149.43(B)(1). If the requested documents are not provided, the requester may “[c]ommence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with [R.C. 149.43(B)] . . . and, if applicable, that includes an order fixing statutory damages.” R.C. 149.43(C)(1)(b).

{¶ 11} To obtain a writ of mandamus, Ellis must prove by clear and convincing evidence that he has a clear legal right to the requested relief and that respondents have a clear legal duty to provide it. *State ex rel. Cincinnati Enquirer v. Sage*, 2015-Ohio-974, ¶ 10. To show that he has a clear legal right to the requested relief in a public-records case like this, Ellis “bears the burden of proving by clear and convincing evidence that the records he requested exist and are public records maintained by the prison” or other public office to which a request was sent, *State ex rel. Barr v. Wesson*, 2023-Ohio-3080, ¶ 16.

2. The General Assembly has 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 2023 Am.Sub.H.B. No. 33 (effective Oct. 3, 2023).

A. Ellis’s Public-Records Requests to ODRC, CoreCivic, and NEOCC

{¶ 12} Ellis has not shown that the records he seeks exist, and therefore, he has not established a clear legal right to the requested relief. As Ellis’s briefing makes clear, he is not seeking general public-records and records-retention policies from ODRC. However, while Ellis has made clear what he does not want, he has not been similarly clear about what he does want. It appears Ellis is asking for department-specific records, but he has not described with any specificity what he thinks those records are. Nor has Ellis proven that separate departments—like “the Laundry Department/Office,” “the Dental Care Department/Office,” and “the Religious Services Department/Office”—have individual records-retention policies that are distinct from the general ODRC policies that Ellis says he does not want.

{¶ 13} Moreover, the records Ellis received from ODRC demonstrate that the individual policies that Ellis seeks do not exist. ODRC’s public-records policy, Policy No. 07-ORD-02,³ applies to all ODRC records. And that policy describes how to treat a broad spectrum of records, including inmate records, medical records, and educational records. The records-retention schedule lists numerous departments it covers, including education, food services, and medical. That these general policies apply to all departments makes it clear that the individual department-specific policies that Ellis seeks do not exist. Therefore, Ellis is not entitled to a writ of mandamus ordering the production of the documents he claims to have requested.

{¶ 14} Nor is Ellis entitled to statutory damages. To be entitled to statutory damages, Ellis must establish by clear and convincing evidence that (1) he transmitted a written public-records request by hand delivery, electronic

3. ODRC amended ODRC Policy No. 07-ORD-02, effective July 20, 2025. The version that was provided to Ellis and is discussed in this opinion is the version of the policy that was effective April 1, 2021.

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 or official failed to comply with an obligation under R.C. 149.43(B). R.C. 149.43(C)(2); *State ex rel. Grim v. New Holland*, 2024-Ohio-4822, ¶ 6. Because Ellis has failed to show that the department-specific records policies he seeks exist, he cannot establish that ODRC, CoreCivic, or NEOCC failed to comply with an obligation under the Public Records Act.⁴

B. Ellis’s Public-Records Requests to Trinity

{¶ 15} Ellis also sent public-records requests to “food services,” which were received by an employee of Trinity, a private food-services company. But he has failed to establish that Trinity is subject to the Public Records Act.

{¶ 16} We begin with a presumption that a private entity is not subject to the Public Records Act. *See State ex rel. Oriana House, Inc. v. Montgomery*, 2006-Ohio-4854, ¶ 26. To work around this presumption, Ellis relies on R.C. 9.06. That statute permits ODRC to enter into a contract for the private operation and management of a prison and requires such a contract to contain a provision mandating that the contractor maintain records in the same manner as ODRC. The problem is that Ellis has not shown that a contract exists between Trinity and ODRC. To the contrary, a district manager for Trinity attested in an affidavit that Trinity provides food services to NEOCC under a contract with CoreCivic.

{¶ 17} As an alternative, Ellis argues that Trinity is subject to the Public Records Act under the quasi-agency theory. Under this theory, when “(1) a private

4. The concurring-and-dissenting opinion acknowledges that “it appears that [the] office-specific records [that Ellis sought] do not exist.” Concurring-and-dissenting opinion, ¶ 65. But it opines that this “does not mean that he did not describe what he wanted clearly enough to warrant a proper response under the statute.” *Id.* at ¶ 70. The statute, however, requires that before statutory damages may be available, the requester must have submitted a request that “fairly describes *the public record* or class of *public records*.” (Emphasis added.) R.C. 149.43(C)(2). Plainly, nonexistent records are not public records. Because Ellis’s request did not “fairly describe [a] public record or class of public records,” *id.*, he is ineligible for statutory damages.

entity prepares records in order to carry out a public office’s responsibilities, (2) the public office is able to monitor the private entity’s performance, and (3) the public office has access to the records for this purpose,” the records pertaining to that public responsibility are public records. *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St.3d 37, 39 (1990).

{¶ 18} However, Ellis has not shown that Trinity prepared any records—much less the public records requested—to carry out ODRC’s responsibilities. Ellis’s argument that Trinity is subject to the Public Records Act under the quasi-agency theory is without merit. Therefore, we deny Ellis’s requests for mandamus relief and statutory damages for the violations he alleged against Trinity and its employee.

C. Ellis’s Public-Records Request to T. Thomas

{¶ 19} Ellis also alleges that he sent a public-records request to “T. Thomas,” who purportedly is a supervisor at the Bureau of Records Management. However, it was Ohio History Connection that was served with Ellis’s complaint. The evidence submitted by Ohio History Connection includes an affidavit of the state archivist—an employee of Ohio History Connection—attesting that Ohio History Connection never received a public-records request from Ellis. That affiant also attests that Ohio History Connection does not participate in the kite system through which Ellis sent his public-records request, that it does not employ a person named T. Thomas, and that it does not maintain the public records Ellis requested.

{¶ 20} This evidence conclusively shows that Ellis did not submit a public-records request to Ohio History Connection. Therefore, Ellis is not entitled to a writ of mandamus against Ohio History Connection or “T. Thomas,” and he is not entitled to statutory damages.

D. Ellis’s Remaining Requests and Motions

{¶ 21} Ellis also filed several motions during the course of this litigation. In one motion, Ellis seeks a default judgment against CoreCivic and NEOCC,

arguing that two of its attorneys with out-of-state addresses failed to comply with our rules on pro hac vice admission. But because both attorneys have been admitted to practice law in Ohio, they were not required to move for pro hac vice admission. So, we deny Ellis’s request for a default judgment.

{¶ 22} Ellis also filed a motion seeking a temporary restraining order or a preliminary injunction against CoreCivic and ODRC, claiming they violated his rights under the First Amendment to the United States Constitution by denying him access to the courts. We find no merit to Ellis’s claims, nor do we have “original jurisdiction under the Ohio Constitution over actions in the nature of declaratory judgment and/or injunction,” *State ex rel. Barr v. Wesson*, 2023-Ohio-3028, ¶ 16. We therefore deny Ellis’s motion for a temporary restraining order or preliminary injunction.

{¶ 23} Finally, because we have not granted Ellis any relief and because there is no evidence showing that any respondents acted in bad faith, we deny Ellis’s request for court costs. *See* R.C. 149.43(C)(3)(a).

III. CONCLUSION

{¶ 24} We deny Ellis’s mandamus claims against all respondents, his request for statutory damages, and his request for court costs. We also deny Ellis’s motion for default judgment and his motion for a temporary restraining order or preliminary injunction.

Writ denied.

KENNEDY, C.J., concurring in part and dissenting in part.

{¶ 25} The majority correctly denies relator, L’Ddaryl Ellis, a writ of mandamus because there is insufficient proof that the public records that Ellis says he wants actually exist. I part ways with the majority, however, when it comes to Ellis’s entitlement to statutory damages. In my view, respondents the Ohio Department Rehabilitation and Correction (“ODRC”), CoreCivic, and Northeast

Ohio Correctional Center (“NEOCC”) violated Ohio’s Public Records Act, R.C. 149.43, when their employees failed to properly respond to Ellis’s numerous public-records requests.

{¶ 26} This is a difficult case. It is hard to believe that the General Assembly would have ever envisioned that any person would make the type of serial requests that Ellis made in rapid-fire succession. Be that as it may, there is no prohibition in the Public Records Act limiting the number of times a person may make a request for public records. And there is no provision giving this court authority to reduce or deny a statutory-damages award when a person makes successive requests for public records to multiple public offices. The statute as enacted by the General Assembly is controlling, and in my view, it compels this court to award Ellis a significant amount of statutory damages.

{¶ 27} Under the Public Records Act, each public-records request made in a separate electronic transmission may be subject to a separate award of statutory damages. *See* R.C. 149.43(C)(2).⁵ A determining factor in awarding statutory damages, based on an independent review of each public-records request, is whether the response of “the public office or the person responsible for public records” (“records custodian”) violated R.C. 149.43(B). R.C. 149.43(C)(2).

{¶ 28} As will be explained below, Ellis is entitled to a total of \$55,000 in statutory damages for 55 separate violations of the Public Records Act—\$4,000 from ODRC and \$51,000 from CoreCivic and NEOCC. I therefore dissent from the court’s judgment to the extent that it denies Ellis an award of statutory damages.

5. The General Assembly has 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 2023 Am.Sub.H.B. No. 33 (effective Oct. 3, 2023).

I. BACKGROUND

A. Public-Records Requests

{¶ 29} In 2024, Ellis transmitted more than 70 public-records requests by electronic kite. “A kite is a type of written correspondence between an inmate and prison staff.” *State ex rel. Griffin v. Szoke*, 2023-Ohio-3096, ¶ 3. Through his requests, Ellis sought six records from various offices within ODRC and NEOCC: the 2023 and 2024 records-retention schedule, records-retention policy, and public-records policy.

{¶ 30} Although Ellis’s mandamus complaint includes 74 separately lettered exhibits setting forth his public-records requests, Ellis has acknowledged that he referred to one request as both Exhibit VV and Exhibit JJJ. This opinion will treat this as a single request—Ellis’s Exhibit VV. Moreover, two other requests do not need to be addressed. Ellis’s Exhibits G and J are duplicative of two other requests, Ellis’s Exhibits F and I. “Generally, public offices are not required to respond to duplicative public-records requests.” *State ex rel. Adkins v. Dept. of Rehab. & Corr. Legal Dept.*, 2024-Ohio-5154, ¶ 15. Therefore, I will not consider the duplicate requests.

{¶ 31} Four other requests can be excluded. I exclude the two public-record requests transmitted to the Bureau of Records Management—Ellis’s Exhibits II and OO—because its purported employee named as a respondent by Ellis in his mandamus complaint was not properly served with the complaint. I also exclude the two requests to respondents Trinity and its employee—Ellis’s Exhibits L and QQ—because Ellis has not demonstrated that those respondents are subject to the Public Records Act.

B. Responses by ODRC, CoreCivic, and NEOCC

{¶ 32} The question whether Ellis is entitled to statutory damages turns on whether the records custodians responded to Ellis’s requests in accordance with the

Public Records Act. For ease of discussion, I have grouped the public-records requests by response.

1. No Response Provided

{¶ 33} Only one of Ellis’s remaining 67 public-records requests did not receive any response in writing. That request—Ellis’s Exhibit BB—was closed without a response approximately two months after Ellis sent it and before Ellis filed his mandamus action. Therefore, CoreCivic and NEOCC violated the Public Records Act regarding Ellis’s Exhibit BB, and Ellis is entitled to statutory damages for this violation.

2. Responses Provided after 30 Days

{¶ 34} Of the remaining requests, five were acknowledged after more than 30 days but less than 60 days, and nine were acknowledged after 60 days had passed. None of the people who responded provided the requested records to Ellis before he filed his mandamus action.

{¶ 35} Under ODRC Policy No. 07-ORD-02(VI)(F),⁶ each public-records request must be evaluated for the length of time it will take to respond. Ohio Department of Rehabilitation and Correction, *Public Records* (effective Apr. 1, 2021), <https://perma.cc/DQ42-39YX> (accessed Apr. 21, 2026). Generally, “[r]outine requests” must be satisfied immediately, and requests for ODRC’s policies are considered routine requests. ODRC Policy No. 07-ORD-02(VI)(F)(1). Nonroutine requests must be acknowledged in writing. ODRC Policy No. 07-ORD-02(VI)(F)(3). In addition, if it is not feasible to respond to a request within five business days, then ODRC staff must acknowledge the request in writing and inform the requester that his or her request has been received and ODRC will respond within a reasonable time. ODRC Policy No. 07-ORD-02(D)(1).

6. ODRC amended ODRC Policy No. 07-ORD-02, effective July 20, 2025. This opinion discusses the version of the policy that was effective April 1, 2021.

{¶ 36} In this case, Ellis sought from various offices the 2023 and 2024 records-retention schedule, records-retention policy, and public-records policy. Under ODRC’s public-records policy, these were routine requests that should have been fulfilled immediately.

{¶ 37} In my view, taking more than 30 days to respond to a public-records request for a public office’s policies that are not subject to any statutory exemption from production is categorically unreasonable.

{¶ 38} R.C. 149.43(B)(1) provides that “upon request by any person, a [records custodian] shall make copies of the requested public record available to the requester at cost and within a reasonable period of time.” “What constitutes a reasonable period ‘depends upon all of the pertinent facts and circumstances,’ . . . including the scope of the request, the volume of responsive records, and whether redactions are necessary.” *State ex rel. Robinson v. Wesson*, 2025-Ohio-1874, ¶ 26, quoting *State ex rel. Morgan v. Strickland*, 2009-Ohio-1901, ¶ 10. However, this court has recognized that “when a relator [has] sought a small number of records in a sufficiently clear request and the records [are] not subject to any recognized exemption from disclosure, a six-day delay in the production of those records by [a] respondent [is] unreasonable.” *Id.* at ¶ 27, citing *State ex rel. Consumer News Servs., Inc. v. Worthington City Bd. of Edn.*, 2002-Ohio-5311, ¶ 38, 41-42, 54.

{¶ 39} Consequently, when requested records are readily accessible to a records custodian and do not require redactions, a delay of more than 30 days in responding to the request is per se unreasonable. CoreCivic and NEOCC therefore violated the Public Records Act when they failed to respond in a reasonable time to the 14 public-records requests placed into evidence as Ellis’s Exhibits Z, AA, CC, EE, FF, GG, LLL, MMM, NNN, PPP, QQQ, RRR, SSS, and TTT. Ellis is entitled to statutory damages for these violations.

3. Responses Denying Requests as Ambiguous

{¶ 40} Just as there are no magical words or phrases needed to make a public-records request, *Berry v. Booth*, 2024-Ohio-5774, ¶ 122 (Kennedy, C.J., concurring in part and dissenting in part), there are no magical words or phrases needed to deny a request as ambiguous or overly broad, *see* R.C. 149.43(B)(2). The only requirement under the statute is that the records custodian give the requester an opportunity to revise the request by informing the requester “of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office’s or person’s duties,” *id.*

{¶ 41} While it is true that none of the people who reviewed Ellis’s public-records requests told him how the records were maintained and accessed, after reviewing each response, I conclude that there were some staff members who properly denied Ellis’s requests as ambiguous.

{¶ 42} For instance, Fredenburg in the mental-health office told Ellis that if he was looking for his medical records, then he could “kite medical records” to make an appointment to review his records and take notes. And Hiner in the medical office responded by telling Ellis that under ODRC Policy No. 07-ORD-11, Ellis was permitted to “look at” his medical records once a quarter for 20 minutes with staff present. McGowen in the dental-care office also told Ellis that his request had to be sent to the medical-records department.

{¶ 43} T. Smith in “Administration” wrote, “A records retention? Did you get the records dep[a]rtment?” Chaplain Johnson responded to Ellis’s second public-records request to religious services by saying that he was not sure what Ellis was asking for and inquired whether Ellis was sure he had the right department. Austin, responding for “Operations,” said, “I am confused on what you are requesting, can you come to my office during normal business hours[?] 9-3 pm.”

{¶ 44} In my view, all these responses communicated that the request was ambiguous and gave Ellis an opportunity to explain his request. Therefore, there was no violation of R.C. 149.43(B), and statutory damages are not available for the requests submitted into evidence as Ellis’s Exhibits D, E, X, Y, NN, PP, RR, HHH, III, and VVV.

4. Proper Responses Denying Requests

{¶ 45} In *Berry*, I would have held that “when an employee of a public office or any person responsible for the public office’s public records receives a public-records request, a joint duty arises for either the public office *or* a person responsible for public records to respond to it. And since one or the other must respond, the failure of one does not excuse the failure of the other.” (Emphasis in original.) 2024-Ohio-5774, at ¶ 51 (Kennedy, C.J., concurring in part and dissenting in part). If the person in the public office who receives a public-records request is unable to fulfill it, he or she cannot simply ignore the request but instead must forward it to a person in the public office who is able to fulfill it. *See id.* at ¶ 72 (Kennedy, C.J., concurring in part and dissenting in part).

{¶ 46} Hight in “Administration” did just that. In the request submitted as Ellis’s Exhibit T, Ellis sought the 2024 records-retention schedule and 2024 records-retention and public-records policies. In the request submitted as Ellis’s Exhibit CCC, Ellis sought the 2023 records-retention schedule and 2023 records-retention and public-records policies. In response, Hight told Ellis that she would send, or had sent, his request to Case Manager Moore. That response is different than just telling Ellis to look somewhere else. Hight did what the Public Records Act requires. *See State ex rel. Teagarden v. Igwe*, 2024-Ohio-5772, ¶ 105 (Kennedy, C.J., concurring in part and dissenting in part) (noting that if an employee of a public office receives a request but cannot fulfill it, the employee has a duty to advise the appropriate public official in the public office). Ellis has not argued that Case Manager Moore violated the Public Records Act. Therefore,

Hight did not violate the Public Records Act, and statutory damages are not available for the requests presented as Ellis’s Exhibits T and CCC.

5. Improper Responses

{¶ 47} Ellis received improper responses to his 40 remaining public-records requests, and some of these responses show why there is a dual obligation under the Public Records Act for the public office and any person responsible for a requested public record to fulfill a valid public-records request. Left to their own devices, employees in a public office might give a public-records requester the runaround.

a. Send to Case Manager/Unit Team

{¶ 48} At least nine employees told Ellis to send his request to his case manager or the unit team. The problem with telling Ellis to send his request to those case managers and unit-team members was that many of those employees told Ellis to look somewhere else when he sent requests directly to them. Case Manager Burrichter told Ellis to go to the library. Unit Manager Gilbert told Ellis to reach out to the records clerk. Unit Manager Silvernail told Ellis to go to the “D-wing” case manager for the 2024 records-retention schedule and records-retention and public-records policies and then told Ellis to send his request to the Bureau of Records Management for the 2023 records-retention schedule and records-retention and public-records policies.

b. Send to Case Manager or the Library or the Education Office

{¶ 49} One employee told Ellis to send his request to either his case manager or the library. Having already discussed the case managers’ responses to Ellis in the preceding section, there is no need to rehash that here. Several other employees told Ellis to go to the library. One of those employees, in another response, told Ellis to send his request to the library or to the education office.

{¶ 50} The education office apparently also includes the library. For requests presented as Ellis’s Exhibits I, WW, and DDD, Askew responded for the

education office and told Ellis that he could review the policies in the library but could not have copies of them. So even when Ellis found a person indisputably responsible for the public records he sought, CoreCivic and NEOCC still improperly denied him a copy of the requested public records.

c. Send to the Records Department or the Bureau of Records Management

{¶ 51} At least four employees told Ellis to contact the records department, the records supervisor, the records clerk, or the Bureau of Records Management. Ellis attempted to request the policies and retention schedule from the Bureau of Records Management, but T. Thomas said that he or she did not have access to that information. (T. Thomas was dismissed from this action for lack of service, as explained above.)

d. Send to the Mail Room

{¶ 52} Payne in the Inspector's Office told Ellis to kite the mail room. But when Ellis transmitted his request to the mail room, Fryfogle told him to kite the records department.

e. Wrong Department

{¶ 53} Four employees told Ellis that he had requested the records from the wrong department. Instead of directing him to someone else or another department, three of them offered no direction or told him to find the proper department himself.

f. Go to ODRC's Policies

{¶ 54} Amusingly, one person told Ellis—in response to Ellis's request for a copy of the 2024 public-records policy—to review ODRC's public-records policy, ODRC Policy No. 07-ODR-02, and grievance policy, Adm.Code 5120-9-31.

g. Closing Out Old Requests

{¶ 55} Almost two months after Ellis had made his requests, Weaver in Operations told Ellis that he was “closing old requests.” Weaver told Ellis to send a new request if he was still having “the same issues.”

C. Mandamus Action

{¶ 56} Ellis filed this mandamus action in October 2024. In 2025, ODRC Policy Nos. 07-ORD-01 and 07-ORD-02 and ODRC’s records-retention schedule were delivered to Ellis. Both policies and the records-retention schedule were in effect for both 2023 and 2024.

{¶ 57} Although ODRC has now produced its public-records policies and records-retention schedule, Ellis argues that ODRC has not shown that those records are the particular public records he requested “from each individual requestee.” Rather, he contends, without supporting evidence, that the different offices should have different policies because they handle different types of records.

II. ANALYSIS

A. Ohio’s Public Records Act and ODRC’s Public-Records Policy

{¶ 58} “Ohio’s Public Records Act is not complicated.” *State ex rel. Harris v. Starcher*, 2026-Ohio-1089, ¶ 82 (Kennedy, C.J., concurring in part and dissenting in part). Under the Public Records Act, a records custodian must take one of three actions upon receipt of a public-records request: (1) produce the requested records, R.C. 149.43(B)(1); (2) deny the request as ambiguous and provide the requester with the information and opportunity necessary to revise his or her request, R.C. 149.43(B)(2); or (3) deny the request with an explanation of why the request was denied, including legal authority, R.C. 149.43(B)(3). *State ex rel. Macksyn v. Spencer*, 2026-Ohio-44, ¶ 18 (Kennedy, C.J., concurring in part and dissenting in part).

{¶ 59} The only timing requirements under the statute are that if the requestor has requested to *inspect* a public record, the records custodian must “promptly” prepare the requested record for review and if the requestor has requested a *copy* of a public record, the records custodian must make a copy available within a “reasonable period of time.” R.C. 149.43(B)(1). Because of

these timing requirements, it is logical that the act “requires a public-records custodian to provide notice of the denial of a public-records request within a reasonable period of time,” *State ex rel. Ware v. Kurt*, 2022-Ohio-1627, ¶ 68, (Kennedy, J., concurring in part and dissenting in part).

{¶ 60} ODRC itself has recognized the timing required for providing a public record to a requester in its public-records policy, ODRC Policy No. 07-ORD-02.⁷ Under this policy, each request for a public record is evaluated on a case-by-case basis. *See* ODRC Policy No. 07-ORD-02(VI)(A)(2) and (C). If it is “not feasible” to fulfill the request for the record within five business days, then staff is required to “acknowledge, in writing, that ODRC received [the] request and plans to respond within a reasonable time.” ODRC Policy No. 07-ORD-02(VI)(D)(1).

{¶ 61} Here, Ellis transmitted each of his public-records requests by electronic kite. Under ODRC Policy No. 50-PAM-02(VI)(E),⁸ kites must be answered by prison staff within seven calendar days. *See also Berry*, 2024-Ohio-5774, at ¶ 75 (Kennedy, C.J., concurring in part and dissenting in part).

B. ODRC, CoreCivic, and NEOCC Violated the Public Records Act

{¶ 62} Based on the foregoing facts and law, ODRC, CoreCivic, and NEOCC violated Ohio’s Public Records Act. In sum, ODRC employees violated the Public Records Act four times in responding to the requests presented in Ellis’s Exhibits B, HH, KK, and UU. CoreCivic and NEOCC employees violated the Public Records Act 51 times in responding (or not responding) to the requests presented as Ellis’s Exhibits A, C, F, H, I, K, M, N, O, P, Q, R, S, U, V, W, Z, AA, BB, CC, DD, EE, FF, GG, JJ, LL, MM, SS, TT, VV, WW, XX, YY, ZZ, AAA,

7. ODRC amended ODRC Policy No. 07-ORD-02, effective July 20, 2025. This opinion discusses the version of the policy that was effective April 1, 2021, which is available at <https://perma.cc/DQ42-39YX>.

8. ODRC amended ODRC policy No. 50-PAM-02, effective December 1, 2025. This opinion discusses the version of the policy that was effective October 7, 2019, which is available at <https://perma.cc/R42H-UHK2>.

BBB, DDD, EEE, FFF, GGG, KKK, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, and UUU.

{¶ 63} The majority concludes that Ellis has not demonstrated that the employees of ODRC, CoreCivic, and NEOCC violated the Public Records Act, because Ellis has not proved that the records he sought in his various requests exist. Although it is true that Ellis offers only speculation that respondents’ offices and departments have separate records-retention schedules and public-records policies from the ones that ODRC provided to him, that just means that Ellis cannot win on an argument that respondents have a duty to *produce* the records he claims to have requested. Regardless of whether he has received the requested records, Ellis has not abandoned his argument that respondents failed to properly *respond* to his public-records requests.

{¶ 64} “A public office unquestionably has a duty to respond promptly and thoroughly to public-records requests.” *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2023-Ohio-3382, ¶ 78 (DeWine, J., concurring in judgment only in part and dissenting in part). And, as noted above, under the Public Records Act, a records custodian must respond to a public-records request in one of three ways: (1) produce the requested records, R.C. 149.43(B)(1); (2) deny the request as ambiguous and provide the requester with the information and opportunity necessary to revise his or her request, R.C. 149.43(B)(2); or (3) deny the request with an explanation of why the request was denied, including legal authority, R.C. 149.43(B)(3).

{¶ 65} As for the first option, respondents were not required by the Public Records Act to provide Ellis with records-retention schedules and public-records policies specific to each office in ODRC, CoreCivic, and NEOCC involved in this case, because it appears that office-specific records do not exist. A records custodian has no duty to provide access to nonexistent records. *State ex rel. Cordell v. Paden*, 2019-Ohio-1216, ¶ 8.

{¶ 66} But even if a public record does not exist, the records custodian still owes the requester a proper response to the request. “If a request for public records is denied, in whole or in part, the [records custodian] is required to provide the requester with an explanation, including legal authority, for why the request was denied.” *State ex rel. Ware v. Smith*, 2025-Ohio-1856, ¶ 8. This court has found that a records custodian violates the Public Records Act by denying a request without providing legal authority for the denial. *See State ex rel. Ayers v. Sackett*, 2025-Ohio-2115, ¶ 27.

{¶ 67} After all, R.C. 149.43(B)(3) states that a records custodian who denies a request “*shall* provide the requester with an explanation, including legal authority, setting forth why the request was denied.” (Emphasis added.) By using the word “shall,” the General Assembly created a mandatory duty for a records custodian to provide an explanation and legal authority if the custodian denies a public-records request. *See Adams v. Harris*, 2024-Ohio-4640, ¶ 71 (the word “shall” signals a mandatory duty).

{¶ 68} In 55 instances, respondents’ employees did not provide Ellis with a proper response to his public-records requests. Those employees did not deny the requests as ambiguous on the basis of the requested records being unidentifiable, nor did they deny the requests on other grounds, explaining why and supporting the denials with legal authority. ODRC, CoreCivic, and NEOCC therefore violated the Public Records Act.

C. Statutory Damages

{¶ 69} A public-records requester shall be entitled to recover statutory damages (1) if the requester submitted a written public-records request by hand delivery, electronic submission, or certified mail to the records custodian, (2) if the request fairly described the public records sought, and (3) “if a court determines that the [records custodian] failed to comply with an obligation” imposed by R.C. 149.43(B). R.C. 149.43(C)(2).

{¶ 70} Here, those requirements are all met. As explained above, ODRC, Core Civic, and NEOCC failed to comply with obligations imposed by R.C. 149.43(B). Further, “[e]lectronic kites constitute electronic submission for purposes of R.C. 149.43(C)(2).” *Adkins*, 2024-Ohio-5154, at ¶ 19. And Ellis fairly described the records he requested—the records he sought may or may not exist, but that does not mean that he did not describe what he wanted clearly enough to warrant a proper response under the statute.

{¶ 71} The majority responds with the following train of thought: (a) the requester has the duty to fairly describe the public records sought; (b) nonexistent records are not public records; and (c) by requesting nonexistent records, Ellis did not fairly describe the records sought, so statutory damages are not available. That reasoning forms a perfect circle. But more than that, it represents a serious misunderstanding of how the Public Records Act works. For example, every public office is required by R.C. 149.43(B)(2) to have a records-retention schedule, so there is practically no way that a requestor seeking such a schedule could fail to fairly identify it in a public-records request. But under the majority’s reasoning, if a public office never got around to adopting a records-retention schedule—so that the schedule is nonexistent—the public office has no duty to respond at all. That cannot be right. If the public office does not produce a record because it does not exist, it has denied the request, and R.C. 149.43(B)(3) requires the public office to provide the requester with an explanation for the denial.

{¶ 72} This case illustrates this point. Take Ellis’s request to the laundry department for the “(1) 2024 records retention, (2) 2024 records retention policy, [and] (3) 2024 public records policy.” Respondents in this case have never expressed confusion over what this language means, and after Ellis filed his complaint, he received (1) ODRC Policy No. 07-ORD-01, ODRC’s records-management policy, (2) ODRC Policy No. 07-ORD-02, ODRC’s public-records policy, and (3) ODRC’s records-retention schedule. Had the recipients of his

public-records requests simply given Ellis these documents, they would have fulfilled their duty under the Public Records Act. Then, if these were not the records Ellis wanted, he could have clarified his request to say that he wanted each individual office's version of these policies. The recipients could have then responded that there were no other responsive documents. That is the type of cooperation between requester and records custodian envisioned by the Public Records Act. And that did not happen here, because respondents' employees largely gave Ellis the runaround.

{¶ 73} So, in my view, Ellis is entitled to statutory damages. The question is, what amount to award? This case is difficult because Ellis sought records from numerous offices within ODRC and NEOCC, and now he seeks \$73,000 in statutory damages. This court has recognized that the General Assembly did not mean for awards of statutory damages to create a windfall. *State ex rel. Fluty v. Raiff*, 2023-Ohio-3285, ¶ 32. Rather, statutory damages are intended to compensate the public-records requester for the lost use of the requested information. R.C. 149.43(C)(2). In enacting the Public Records Act, however, the General Assembly struck a careful balance between preventing a windfall to requesters and preserving the people's right to access government records, and it decided to allow awards of statutory damages to enforce the public's right of access. "It is not the role of the courts ' . . . to second-guess the General Assembly's policy choices.'" *Stetter v. R.J. Corman Derailment Servs., L.L.C.*, 2010-Ohio-1029, ¶ 35, quoting *Groch v. Gen. Motors Corp.*, 2008-Ohio-546, ¶ 212.

{¶ 74} Therefore, this court has an obligation to apply the Public Records Act as written. Doing that, as I must, these are the reasons why I would award Ellis tens of thousands of dollars in statutory damages, as absurd as that sounds.

{¶ 75} Statutory damages are available on a transmission-by-transmission basis. R.C. 149.43(C)(2) provides that statutory damages are available "[i]f a requester *transmits* a written request by hand delivery, electronic submission, or

certified mail.” (Emphasis added.) “When calculating statutory damages, what matters—and what *is* tied to the statutory language—is whether the public-records requests were made in the same transmission.” (Emphasis in original.) *State ex rel. Ware v. Parikh*, 2023-Ohio-2536, ¶ 51 (Kennedy, C.J., concurring in part and concurring in judgment only in part).

{¶ 76} Here, Ellis sought records from different records custodians, asking for each office’s 2023 and 2024 public-records policy, records-retention policy, and records-retention schedule. According to Ellis, each office has different public-records policies and different records-retention schedules. While I recognize that Ellis has failed to present clear and convincing evidence demonstrating that each office in fact maintained its own public-records policies and records-retention schedules, that does not absolve ODRC, CoreCivic, or NEOCC of their failure to respond to Ellis in the manner dictated by the Public Records Act. Ellis made his public-records requests in 55 separate kites, which means the requests were made in 55 separate transmissions for purposes of R.C. 149.43(C)(2), and respondents failed to properly respond to each one. That means 55 separate awards of statutory damages.

{¶ 77} Nonetheless, in weighing the competing policy interests at play when it comes to public access to government records, the General Assembly created a safety valve for records custodians, providing in the Public Records Act that “[t]he court *may* reduce an award of statutory damages or not award statutory damages.” (Emphasis added.) *Id.* That authority, however, is limited. To reduce or not award statutory damages, the court must decide that “a well-informed” records custodian would reasonably believe that the conduct of the records custodian (1) “did not constitute a failure to comply with an obligation in accordance with [R.C. 149.43(B)],” R.C. 149.43(C)(2)(a), and (2) “would serve the public policy that underlies the authority that is asserted as permitting that conduct,” R.C. 149.43(C)(2)(b).

{¶ 78} No well-informed records custodian would believe that taking more than 30 days to respond to a simple request for a public office's policies is reasonable, nor would a well-informed records custodian believe that misdirecting a requestor to other offices complies with R.C. 149.43(B). Therefore, there is no basis to reduce or not award statutory damages in this case.

{¶ 79} R.C. 149.43(C)(2) sets forth how to calculate statutory damages:

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the [records custodian] failed to comply with an obligation in accordance with [R.C. 149.43(B)], beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars.

{¶ 80} ODRC failed to properly respond to four of Ellis's public-records requests. CoreCivic and NEOCC failed to properly respond to 51. Both did so for more than ten days from the date Ellis filed this action, so he is entitled to awards of \$1,000 per request. That means a total award of \$55,000 is required in this case—\$4,000 against ODRC and \$51,000 against CoreCivic and NEOCC. *See* R.C. 149.43(C)(2).

{¶ 81} I am reminded of Charles R. Swindoll's words, which condense a poem by Charles Osgood and sum up this case aptly:

This is a story about four people named Everybody,
Somebody, Anybody, and Nobody.

There was an important job to do and Everybody was asked
to do it.

Everybody was sure that Somebody would do it.

Anybody could have done it, but Nobody did it.

Somebody got angry because it was Everybody's job.

Everybody thought that Anybody would do it, but Nobody realized that Everybody wouldn't do it.

It ended up that Everybody blamed Somebody when Nobody did what Anybody could have done.

Charles R. Swindoll, available at <https://www.goodreads.com/quotes/829722-this-is-a-story-about-four-people-named-everybody-somebody> (accessed Apr. 20, 2026) [<https://perma.cc/468C-TWNN>].

{¶ 82} Everybody receiving the public-records requests in this case had an obligation to respond properly. Anybody could have done it, and somebody should have. But nobody did.

III. CONCLUSION

{¶ 83} For these reasons, I would deny Ellis the requested writ of mandamus but would nonetheless award him a total of \$55,000 in statutory damages—\$4,000 against the Ohio Department Rehabilitation and Correction and \$51,000 against CoreCivic and Northeast Ohio Correctional Center. I therefore concur in part and dissent in part.

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