

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2026-OHIO-3804

THE STATE EX REL. HARRIS v. PUT-IN-BAY POLICE DEPARTMENT.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Harris v. Put-in-Bay Police Dept.*, Slip Opinion No. 2026-Ohio-3804.]

Mandamus—Public-records requests—R.C. 149.43—Relator failed to rebut public office’s attestations that it provided him with all records responsive to his public-records requests, and public office provided responsive records within a reasonable time—Writ and relator’s requests for statutory damages and court costs denied.

(No. 2025-0367—Submitted September 16, 2025—Decided September 30, 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 March 2024 public-records request.

DEWINE, J.

{¶ 1} This is an original action in mandamus brought under the public-records statute, R.C. 149.43. We are asked by Lionel Harris to direct the Put-in-Bay Police Department to provide him with copies of records responsive to two public-records requests that Harris sent a year apart. Harris has not rebutted the police department's attestations that it provided all responsive records, so we deny the writ.

{¶ 2} Harris also seeks \$2,000 in statutory damages and an award of court costs, arguing that the department's response time was unreasonable. Because Harris has not demonstrated his entitlement to statutory damages by clear and convincing evidence, we decline to award statutory damages. We also deny Harris's request for court costs.

I. BACKGROUND

{¶ 3} Harris is incarcerated at the North Central Correctional Complex. On March 30, 2024, using a contraband cellphone that he had hidden under his mattress, he accessed an email account associated with the name louisethomaslt83@gmail.com. Harris caused an email from that address to be sent to an email address at the Put-in-Bay Police Department that had been designated to receive public-records requests: records@pibpolice.com. The email asked for ten categories of documents, including the department's records-retention schedule and policy, personnel and payroll records of the police chief, budget materials, use-of-force reports, the department's booking-and-release policy, the current bond register, and racism complaints against patrol officers.

{¶ 4} Not surprisingly, given the unorthodox method of transmission, this email ended up in a spam file in the police department's email. No one at the police

department was aware of the email and Harris did nothing to follow up on his request.

{¶ 5} On March 3, 2025, Harris allegedly penned another public-records request to the police department. This time, the request purports to have come from an email account connected to his own name.¹ In that email, Harris requested five items: (1) “All administrative leave or reinstatements issued to any employees of the Put-in-Bay Police Department from . . . September 2023 through September 2024”; (2) the “Annual Budget Report for 2024”; (3) the “Payroll record – employee earnings for [the] current police chief from 2024 to present”; (4) “All complaints against Put-in-Bay patrol officers for September 2023”; and (5) “All use of force reports for September 2023.”

{¶ 6} Ten days after he sent the March 2025 request, Harris commenced this action, asking for a writ of mandamus ordering the police department to respond to both requests. Harris attached to the mandamus complaint copies of both his March 2025 request and the March 2024 request from the Louise Thomas email account.

{¶ 7} At that point, the police department searched its spam file and found the Louise Thomas email. Within days of receiving the complaint, the police department, through the village solicitor, issued written responses to both requests and provided Harris with responsive records.

{¶ 8} In the solicitor’s letter responding to the first request, Harris was informed that the email had been “delivered directly into a spam file” within the village’s email system and had “not [been] viewed by anyone” until after the police department was served with Harris’s mandamus complaint. The solicitor provided copies of responsive records for five of the ten requested items and stated that no records exist that are responsive to Harris’s request for the records-retention

1. As discussed later, the screenshot submitted as evidence makes the exact email address hard to decipher. The evidence submitted shows an email from “Lionel Ha...” to “records.”

schedule, the records-retention policy, the use-of-force reports, the booking-and-release policy, or racism complaints against village police officers.

{¶ 9} The solicitor responded to Harris’s March 2025 public-records request in a separate letter, providing him copies of records responsive to his request for the 2024 annual budget report and the police chief’s payroll record, and explaining that no responsive records exist for the rest.

{¶ 10} In response to Harris’s mandamus complaint, the police department filed a motion to dismiss. We denied the motion, ordered the police department to file an answer, and granted an alternative writ, setting the schedule for the parties’ submission of evidence and merit briefs. 2025-Ohio-1876.

II. ANALYSIS

A. The Recent Amendments to R.C. 149.43(C) Do Not Apply

{¶ 11} The police department argues that recent amendments to Ohio’s Public Records Act, R.C. 149.43, foreclose Harris from obtaining a writ of mandamus or statutory damages. But those amendments—contained in 2024 Sub.H.B. No. 265 (effective Apr. 9, 2025) and 2025 Am.Sub.H.B. No. 96 (effective Sept. 30, 2025)—imposing additional procedural requirements for mandamus actions and barring inmates from receiving statutory damages apply only “prospectively to any mandamus action filed on or after” the date those amendments became effective. *State ex rel. Bates v. Jenkins*, 2026-Ohio-1994, ¶ 19. Because Harris filed this action on March 13, 2025, before the amendments’ effective dates, the amendments do not apply. *Id.*²

B. Mandamus

{¶ 12} A writ of mandamus is an extraordinary remedy that is appropriate to issue in public-records cases when a relator shows that a respondent has failed

2. This opinion thus applies the version of the Public Records Act enacted in 2024 Sub.S.B. No. 29 (effective Oct. 24, 2024), unless otherwise noted.

to comply with its obligations under R.C. 149.43(B). *See State ex rel. Parker Bey v. Byrd*, 2022-Ohio-476, ¶ 9. The Public Records Act 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). To obtain the writ, the requester must establish by clear and convincing evidence a clear legal right to the records requested and a corresponding clear legal duty on the part of the public office to provide them. *Byrd* at ¶ 9.

{¶ 13} Harris has failed to establish that the police department did not comply with the Public Records Act. The record demonstrates that the police department, upon becoming aware of Harris’s initial request, promptly investigated its spam system. It then located the request and provided Harris with responsive records and a letter explaining the status of each requested item. It additionally responded promptly to the March 2025 request, again providing responsive records and a letter of explanation.

{¶ 14} In response to the alternative writ, the police department included in its submission of evidence affidavit testimony from one of its sworn peace officers and from the village solicitor’s support specialist stating that all records responsive to both of Harris’s public-records requests were produced to him. As a general rule, once a public office has provided a public-records requester with copies of the requested records, a mandamus claim is moot. *State ex rel. Mobley v. LaRose*, 2024-Ohio-1909, ¶ 7. But Harris argues that the police department did not fully respond to either request, so mootness does not apply and a writ of mandamus should issue. We turn next to that argument.

1. Harris’s March 2024 Request

{¶ 15} In response to Harris’s March 2024 request, the police department stated that the use-of-force reports and the booking-and-release policy requested by Harris do not exist. Harris argues that this response is “not credible,” asserting that

it is “unfathomable” that a modern police department would lack a booking-and-release policy and “unbelievable” that no use-of-force reports exist. He argues that these types of reports are subject to disclosure under this court’s decision in *State ex rel. Standifer v. Cleveland*, 2022-Ohio-3711.

{¶ 16} Harris’s arguments are insufficient. To overcome the police department’s affidavit evidence that all responsive records have been produced, Harris must present “clear and convincing evidence showing a genuine issue of fact that additional responsive records exist,” *State ex rel. Frank v. Clermont Cty. Prosecutor*, 2021-Ohio-623, ¶ 15. He has not done so. His arguments instead rest solely on speculation, which is inadequate to establish the existence of additional records. See *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor’s Office*, 2012-Ohio-4246, ¶ 16.

{¶ 17} Harris’s reliance on *Standifer* also does not assist him. In that case, use-of-force reports existed because officers were required to complete them under departmental policy. See *Standifer* at ¶ 2-3. There is no evidence offered in this case showing that the Put-in-Bay Police Department maintains a similar policy or records. See *State ex rel. Ware v. Akron Police Dept.*, 2025-Ohio-1198, ¶ 12 (distinguishing *Standifer* and denying writ because no evidence showed that the requested records existed). Harris has therefore failed to meet his burden as to the March 2024 request.

2. Harris’s March 2025 Request

{¶ 18} Harris likewise challenges the police department’s response to his March 2025 request—specifically, its statement that no responsive records exist as to his request for “administrative leave or reinstatement[.]” records issued to employees from September 2023 through September 2024. He relies on *Wilson v. Russo*, 2022 WL 911271 (N.D. Ohio Mar. 29, 2022), in support of his argument that such records must exist.

{¶ 19} Harris’s reliance on *Wilson* is misplaced. That case, which arose out

of a federal civil-rights action, referred to a former Put-in-Bay police chief who had been placed on administrative leave in 2020. *Id.* at *1-2. The administrative leave in *Wilson* occurred more than three years before the time frame covered by Harris’s request. *Wilson* does not provide clear and convincing evidence that responsive records exist in this case for the requested period and with respect to the current police chief. Accordingly, Harris has not satisfied his burden with respect to the March 2025 request.

{¶ 20} Because Harris has failed to rebut the police department’s evidence that all responsive records have been produced for both of his public-records requests, he has not established a clear legal right to additional relief or a corresponding duty on the part of the police department. Therefore, we deny his request for a writ of mandamus.

C. Statutory Damages

{¶ 21} Harris argues that he should recover statutory damages because the police department unreasonably delayed in responding to both requests. R.C. 149.43(C)(2) permits an award of statutory damages when a requester establishes that (1) he transmitted a 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 public records,” (3) he fairly described the documents being requested, and (4) the public office failed to comply with its obligations under R.C. 149.43(B). The public office’s obligations include making public records available “within a reasonable period of time.” R.C. 149.43(B)(1).

1. Statutory Damages for the March 2024 Request

{¶ 22} To be entitled to statutory damages, Harris must establish that he has been aggrieved by the police department’s failure to comply with an obligation imposed by the Public Records Act. R.C. 149.43(C)(3); *Anderson v. Wilson*, 2025-Ohio-493, ¶ 12. It is Harris’s burden to “prov[e] his entitlement to statutory damages by clear and convincing evidence,” *id.* at ¶ 15. So here Harris must

demonstrate by clear and convincing evidence that the police department failed to satisfy its obligation to make copies of public records available “within a reasonable period of time,” R.C. 149.43(B)(1); *see also State ex rel. Grim v. New Holland*, 2024-Ohio-4822, ¶ 6.

{¶ 23} In enacting the Public Records Act, the General Assembly chose not to provide a defined period (e.g., 30 days) by which a public office must respond to a public-records request. Instead, it requires a response within a “reasonable period of time,” R.C. 149.43(B)(1). Reasonableness is a question for the fact-finder that depends on an assessment of the public office’s conduct based on “all of the pertinent facts and circumstances.” *State ex rel. Morgan v. Strickland*, 2009-Ohio-1901, ¶ 10; *see also State ex rel. Kesterson v. Kent State Univ.*, 2018-Ohio-5108, ¶ 16. Our caselaw instructs that our assessment of the reasonableness of the response time properly considers the requester’s conduct because “R.C. 149.43 contemplates that the requester and the public-records custodian cooperate in fulfilling a request.” *Morgan* at ¶ 18.

{¶ 24} The police department responded to Harris’s March 2024 request 13 months after it was emailed. We have suggested that the absence of a response for over a year, without justification, constitutes a violation of the timely response requirement in R.C. 149.43(B)(1). *See State ex rel. Horton v. Kilbane*, 2022-Ohio-205, ¶ 16-22. But based on the unique facts of this case, we conclude that Harris has failed to meet his burden of showing that the police department’s response time was unreasonable.

{¶ 25} Here, the delay was not the result of any neglect or misfeasance by the police department. Rather, the reason that the police department didn’t reply more quickly to Harris’s request was because it was unaware of Harris’s request since it had been diverted to a spam file. It was not unreasonable for the police department to not respond to a request that it was unaware of having received. And

once it was made aware, it promptly responded.³

{¶ 26} The concurring-and-dissenting opinion argues our decision in *State ex rel. Ware v. Akron*, 2021-Ohio-624, “categorically reject[s]” our holding here. Concurring-and-dissenting opinion, ¶ 88-93, 111. That case involved the delivery of a public-records request by certified mail to the administrative assistant of the public office; the administrative assistant died before informing anyone of the request. The public office did not respond to the request until nine months later, once the requester filed a complaint for a writ of mandamus. We rejected the public office’s argument that it responded within a reasonable time, finding the death of the assistant did not excuse the nine-month delay in responding to the certified-mail request because the public office had been made aware of the request. *See Ware*, 2021-Ohio-624, at ¶ 18.

{¶ 27} The concurring-and-dissenting opinion cites *Ware*, 2021-Ohio-624, for the proposition that “the fact that the city misplaced the public-records request did not relieve the city of its duty to provide the requested records within a reasonable time” of the request’s transmission and that the police department here similarly “lost track” of Harris’s email. Concurring-and-dissenting opinion at ¶ 89, 92. But that opinion’s own description of *Ware*, 2021-Ohio-624, proves our point. To “misplace” or “lose track” of something, one must be aware of the thing in the first place. The public office in *Ware*, 2021-Ohio-624, could misplace the request only because it had been aware of the request in the first place. But that did not happen here. When Harris’s email went to the spam file, nobody in the police

3. The concurring-and-dissenting opinion accuses us of creating a “found later” exception to the Public Records Act. *See* concurring-and-dissenting opinion at ¶ 81-87, 111. We do no such thing. While that opinion focuses on the duty to produce records “‘upon request’” (emphasis in original), *id.* at ¶ 54, 83, quoting R.C. 149.43(B)(1), our review here is focused on whether that production was done “within a reasonable time,” R.C. 149.43(B)(1). And whether a response was made within a reasonable time “depends upon all of the pertinent facts and circumstances,” *Morgan*, 2009-Ohio-1901, at ¶ 10, which certainly includes whether the public office was aware of the public-records request in the first place.

department was aware of its delivery, so the police department never “misplaced” or “lost track” of the email and it became aware of the request only when Harris filed this mandamus action, at which point the police department promptly responded to the public-records request.

{¶ 28} The concurring-and-dissenting opinion places the “responsibility for the misdirection of Harris’s 2024 request” on the police department, speculating misfeasance on the police department’s part based on how it “set the inbox-control parameters on its public-records email account.” Concurring-and-dissenting opinion at ¶ 95. But nothing in the record suggests the police department did anything other than create an email address designated to receive public-records requests.⁴ And we don’t know exactly why Harris’s email went to the police department’s spam file. But we do know the email contained a URL leading to a different page and was sent from a contraband cellphone in a prison to a police department, presumably from a phone that wasn’t registered to Harris, and from an email account with someone else’s name. We also know that email addresses without proper authentication or a legitimate sender history, or that contain URLs as text leading to a different page, are some of the many triggers for a spam filter. *See* MailChimp, *How Spam Triggers Impact Your Email Open Rates*, <https://mailchimp.com/resources/spam-triggers/> (accessed Jan. 5, 2026) [<https://perma.cc/G5T6-YQCK>]; Mailtrap, *The Whys and the Hows of Email Spam Filters* (Feb. 16, 2024), <https://mailtrap.io/blog/spam-filters/> (accessed Aug. 22, 2026) [<https://perma.cc/U8FS-TJNF>].

{¶ 29} Given the numerous indicia of suspicion, it should not have come as a surprise to Harris or anyone else that the email was diverted to a spam file. Yet,

4. The concurring-and-dissenting opinion goes further, arguing the police department “should have changed the filter’s settings . . . to ensure legitimate emails, like Harris’s d[o] not inadvertently get overlooked.” Concurring-and-dissenting opinion at ¶ 97. But no such duty appears in the Public Records Act.

for almost a year Harris did nothing to follow up or make sure that his request had been delivered. And as we have explained, “[a] public-records requester has an obligation to cooperate with the public-records custodian[’s] fulfilling a request, including an obligation to inform the public agency when [he] feels that a request has been incomplete or slow.” *State ex rel. DiFranco v. S. Euclid*, 2015-Ohio-4914, ¶ 25.

{¶ 30} In sum, Harris has not met his burden of demonstrating by clear and convincing evidence that the police department unreasonably delayed its response to his request. Accordingly, considering all the “pertinent facts and circumstances,” *Morgan*, 2009-Ohio-1901, at ¶ 10, statutory damages are not warranted for the March 2024 request.

2. *Statutory Damages for the March 2025 Request*

{¶ 31} Statutory damages are likewise unwarranted for Harris’s March 2025 request. First, a requester seeking statutory damages must prove by clear and convincing evidence the method of delivery of the request. *State ex rel. McDougald v. Greene*, 2020-Ohio-5100, ¶ 22. Harris has not met that burden. Unlike the March 2024 request, the police department does not acknowledge that it received Harris’s March 2025 request by email. Rather, the police department responded to Harris’s March 2025 request within days of receiving his mandamus complaint, referring to the March 2025 request merely as “the communication attached as Exhibit B to the Affidavit” in Harris’s complaint. The mere fact the police department referred to Harris’s exhibit B as an “email,” *see* concurring-and-dissenting opinion at ¶ 66, 68, doesn’t change the fact that the police department has averred that it received the alleged communication only as an exhibit attached to Harris’s complaint. And contrary to that opinion’s assertion otherwise, nowhere does the police department admit it found the March 2025 request in its email account. *See id.* at ¶ 73. While an employee for the police department does aver that he discovered the March 2024 request in the department’s spam file, regarding

the March 2025 request, this same employee states only that he worked to “assure that an appropriate response to the communication attached as Exhibit B” to Harris’s complaint was provided. Not once does he aver that he found the March 2025 request anywhere other than Harris’s mandamus complaint.

{¶ 32} Furthermore, while Harris has submitted a screenshot of what purports to be an email, the screenshot lacks clear sender and recipient information—it shows only that it was sent from “Lionel Ha. . .” to “records,” with the recipient’s email address appearing only in the body of the email, and does not demonstrate that the email was actually sent to the police department. This is significantly different from his March 2024 request, which clearly identifies in the header of the email the email address from which Harris sent the request, the email address to which the request was sent, a subject line, and an indicator that it was a forwarded email. And Harris does not attest in the affidavit he submitted that he sent the March 2025 request by email. Rather, he says only that he “made a second public records request” in March 2025. This is in marked contrast to the previous paragraph of his affidavit in which Harris expressly states that he “submitted an electronic public records request” in March 2024. Thus, Harris has failed to meet his burden to show that he transmitted the March 2025 public-records request by email. *See McDougald* at ¶ 22 (a public-records requester seeking statutory damages must prove the method of delivery by clear and convincing evidence).

{¶ 33} What is more, once the police department was served with Harris’s mandamus complaint and became aware of the public-records request, it responded within days, providing responsive records on April 2, 2025. Under these circumstances, Harris has not shown that the police department failed to respond to his request within a reasonable time.

{¶ 34} But even if we were to take the concurring-and-dissenting opinion’s position and assume that Harris emailed his request on March 3, we would still conclude that Harris is not entitled to statutory damages because the police

department's response time was not unreasonable. The police department responded to the request on April 2, 30 days after Harris's alleged request. Whether that response was within a reasonable time "depends upon all the pertinent facts and circumstances," *State ex rel. Cincinnati Enquirer v. Deters*, 2016-Ohio-8195, ¶ 23, citing *Morgan*, 2009-Ohio-1901, at ¶ 10, including "'an opportunity on the part of the public office to examine records prior to inspection in order to make appropriate redactions of exempt materials,'" *Kesterson*, 2018-Ohio-5108, at ¶ 16, quoting *State ex rel. Warren Newspapers, Inc. v. Hutson*, 1994-Ohio-5, ¶ 19. Here, Harris's request was for multiple classes of records that spanned over a year. The police department had to then determine which documents met the request and which did not, including which records were exempt from disclosure under statutory exceptions. So even if the police department did take 30 days to respond to Harris's request, its response time was reasonable given the circumstances. *See Deters* at ¶ 23; *see also State ex rel. Shaughnessy v. Cleveland*, 2016-Ohio-8447, ¶ 22 (holding that "[w]hile 31 business days may appear to stretch the outer limits of reasonableness," that response time was nonetheless reasonable).

{¶ 35} Thus, even if we assume that Harris sent his request on March 3, the police department's response time was reasonable. We therefore deny Harris's request for statutory damages for the March 2025 request.

D. Court Costs

{¶ 36} Harris also seeks an award of court costs in this action. Because we deny the writ, Harris is not entitled to court costs. *State ex rel. Mobley v. Bates*, 2024-Ohio-2827, ¶ 16. Regardless, Harris filed an affidavit of indigency in this case and thus has not incurred any court costs. *Id.*

III. CONCLUSION

{¶ 37} We deny the writ and statutory damages for both the March 2024 and March 2025 public-records requests. We also deny Harris's request for an award of court costs.

Writ denied.

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

{¶ 38} “While there is some dispute whether Lady Justice should wear a blindfold, the metaphor was surely never intended to suggest that justice disregards the facts.” *Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). Nor was it intended to suggest that justice disregards the law. Unfortunately, the majority sees things differently.

{¶ 39} This case presents straightforward questions of fact and law regarding relator Lionel Harris’s entitlement to statutory damages for two public-records requests that were not fulfilled by respondent, the Put-in-Bay Police Department, within a reasonable time. The majority denies Harris an award of statutory damages for one of those requests because, it says, Harris has not proved that he transmitted his request by hand delivery, certified mail, or electronic submission. However, Harris and the police department both submitted evidence showing that Harris emailed the public-records request—something the department has not contested. Copies of this evidence appear in this opinion so that readers may decide for themselves.

{¶ 40} The majority then denies Harris an award of statutory damages for a second request after assuming that Harris—and not the police department—deserves the blame for the police department’s delay in finding the public-records request. In doing so, the majority creates a new “found later” exception to Ohio’s Public Records Act that is absent from R.C. 149.43 and has already been squarely rejected by this court.

{¶ 41} While I agree with the court’s judgment denying as moot Harris’s request for a writ of mandamus and denying Harris’s request for court costs, I disagree with the majority’s decision denying Harris’s request for statutory damages. Even though Harris’s request for a writ of mandamus is moot, his request

for statutory damages is not. *State ex rel. Castellon v. Swallow*, 2025-Ohio-5576, ¶ 26. And Harris has met his statutory burden for such an award by showing that both of his public-records requests were transmitted electronically and fairly described the requested records and that the police department took an unreasonable amount of time to respond to his requests. Nothing more is required. Therefore, I would award Harris statutory damages in the amount of \$2,000. Since the majority would rather turn a blind eye to the facts and the law, I concur in part and dissent in part.

I. FACTS

{¶ 42} The police department established an email address for receiving public-records requests: records@pibpolice.com.

{¶ 43} On March 30, 2024, Harris transmitted a public-records request to that email address using a Google email account (“Gmail”). In the email’s subject line, he titled the email “Public records request,” and he addressed the email to the “Put in Bay Police department public Records Officer.” In that email, Harris requested ten records:

1. Put in Bay Police department’s most current records retention schedule;
2. Personnel file of the Put in Bay chief of police James Kimble (redacted in a manner consistent with R.C. 149.43);
3. Annual budget report for 2023;
4. Use of force reports for the department from 2022 to present;
5. Current bond register;
6. Booking and release policy;
7. Payroll record – employee earnings for police chief James Kimble from 2023 to present;

8. Employee sick leave/vacation records of James Kimble for 2023 to present;

9. Put in Bay Police department's most current records retention policy;

10. All complaints against Put in Bay patrol officers accusing them of racism from September 2023 to present.

Harris signed the email using his name and included his prison address where he wanted the requested records to be sent. During this litigation, Harris admitted that he transmitted that public-records request from prison using a contraband cellphone.

{¶ 44} On March 3, 2025, Harris transmitted another public-records request to the police department using a different email account. This time, Harris requested five records:

1. All administrative leave or reinstatement issued to any employees of the Put in Bay police department from the time frame of September 2023 through September 2024.

2. Annual Budget Report for 2024.

3. Payroll record – employee earnings for current police chief from 2024 to present.

4. All complaints against Put in Bay patrol officers for September 2023.

5. All Use of force reports for September 2023.

{¶ 45} On March 13, 2025, Harris filed a complaint requesting a writ of mandamus, court costs, and statutory damages related to his two public-records requests.

{¶ 46} On March 26, Yuri Linetsky—a commissioned and sworn peace officer who serves as a part-time officer for the police department and whose administrative duties include “evaluating and responding to requests for public records”—learned about the mandamus complaint. Linetsky states in an affidavit that he then began reviewing the department’s public-records email account and found Harris’s 2024 email requesting public records, a copy of which Harris had attached as exhibit A to his mandamus complaint. Linetsky also found in the department’s public-records email account Harris’s 2025 email requesting public records, a copy of which Harris attached as exhibit B to his mandamus complaint.

{¶ 47} As soon as Linetsky found Harris’s emails, he analyzed them to determine whether any of the requested records were excepted from disclosure under the Public Records Act; he then identified and assembled responsive records to the requests. According to Linetsky, his work was completed “within a matter of days.”

{¶ 48} On April 2, in separate letters, counsel for the police department responded to Harris’s 2024 and 2025 public-records requests. In response to the 2024 request, counsel admitted that the department had received Harris’s request by email. The subject line of the letter states, “Response to your March 30, 2024 email.” In the body of the letter, counsel says, “This email was received by the Village of Put-in-Bay’s email system but delivered directly into a spam file. As a result, the email was not viewed by anyone in the Village until after you filed your petition in the above referenced matter.” Counsel then listed the public records that Harris had requested and provided a response to each request. The letter and responsive records were transmitted by regular and certified mail to Harris at the prison address Harris had provided in his public-records request.

{¶ 49} In response to Harris’s 2025 public-records request, counsel admitted that the police department had received Harris’s request by email. This

SUPREME COURT OF OHIO

admission is apparent from the letter that counsel sent to Harris, a portion of which is shown below:

Lionel Harris
#A252-066
P.O. Box 1812
Marion, OH 43301

*Sent by Regular U.S. Mail and by Certified
Mail, Return Receipt Requested*

Re: Response to your March 3, 2025 email

Dear Mr. Harris:

I am the Solicitor for the Village of Put-in-Bay (“Village”).

This is a response to your March 3, 2025 email, in which you requested copies of the following records:

The subject line of the letter states, “Response to your March 3, 2025 email.” And in the body of the letter, counsel says, “This is a response to your March 3, 2025 email, in which you requested copies of the following records” Counsel then listed the public records that Harris had requested and provided a response to each request. The letter and responsive records were transmitted by regular and certified mail to Harris at the prison address he had provided in his public-records request.

II. LAW AND ANALYSIS

A. Statutory Damages under Ohio’s Public Records Act

{¶ 50} Subject to an exception not relevant here, “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).⁵

5. The General Assembly has recently amended R.C. 149.43, most notably in 2024 Sub.H.B. No. 265 (effective Apr. 9, 2025). This opinion applies the versions of the statute enacted in 2023

{¶ 51} A public-records requester is “entitled to recover [an] amount of statutory damages” if he or she meets certain statutory requirements and the public office fails to comply with its statutory duties. R.C. 149.43(C)(2). Specifically, a public-records requester must show by clear and convincing evidence, *State ex rel. Anderson v. Wilson*, 2025-Ohio-493, ¶ 15, that (1) he or she transmitted the request by a qualifying method, (2) he or she fairly described the requested records, and (3) the public office did not provide the requested records within a reasonable time, R.C. 149.43(C)(2). Qualifying *transmissions* include hand delivery, certified mail, and electronic submission. *Id.* If the public-records requester satisfies his or her burden, an award of statutory damages under the Public Records Act is compulsory: “the requester *shall* be entitled to recover . . . statutory damages” (emphasis added), *id.*

{¶ 52} The amount of damages a public-records requester may receive is limited to “one hundred dollars for each business day” from the date the requester filed a complaint for a writ of mandamus to the day the public office complies with its statutory obligations under the Public Records Act. *Id.* In all, a requester may receive “a maximum of one thousand dollars” per request. *Id.*

{¶ 53} The Public Records Act provides only one circumstance in which “[t]he court *may* reduce an award of statutory damages or not award statutory damages.” (Emphasis added.) *Id.* To reduce or not award statutory damages, the court must decide that “a well-informed” public-records custodian would reasonably believe that the conduct of the public office or person responsible for the requested public records (1) “did not constitute a failure to comply with an obligation in accordance with [R.C. 149.43(B)]” and (2) “would serve the public policy that underlies the authority that is asserted as permitting that conduct.” R.C. 149.43(C)(2)(a) and (b). Both prongs must be met.

Sub.H.B. No. 33 (effective Oct. 3, 2023) and 2024 Sub.S.B. No. 29 (effective Oct. 24, 2024); those versions are substantially similar.

{¶ 54} When the court is faced with the question whether a public office produced requested records within a *reasonable time*, the answer turns on “all the pertinent facts and circumstances,” *State ex rel. Cincinnati Enquirer v. Deters*, 2016-Ohio-8195, ¶ 23, such as the efforts made by the public office to respond, the frequency and number of requests made by the requester, the volume of responsive records that were requested and produced, the difficulty of conducting the search for the requested records, and the need for redactions, *see State ex rel. Shaughnessy v. Cleveland*, 2016-Ohio-8447, ¶ 22. However, because R.C. 149.43(B)(1) requires the production of public records “*upon request*” (emphasis added), “the statute measures reasonableness of the response time by reference to *the date of the request*” (emphasis added), *State ex rel. Howard v. Watson*, 2023-Ohio-3399, ¶ 33.

B. Harris Is Entitled to Statutory Damages

{¶ 55} As explained above, to be entitled to statutory damages, Harris must establish by clear and convincing evidence only that he has transmitted a public-records request by hand delivery, certified mail, or electronic submission; that he fairly described the requested records; and that the public office did not provide him with the requested records within a reasonable time. *See* R.C. 149.43(C)(2).

{¶ 56} The police department does not dispute that Harris “fairly described” the requested records. And Linetsky and counsel for the department admit that Harris transmitted both public-records requests by a qualifying transmission—email. Lastly, based on Linetsky’s averments that he reviewed and compiled the responsive records to both requests within “a matter of just days” of being made aware of them, the department did not provide Harris with the requested records within a reasonable time of the requests’ being made. Harris is therefore entitled to statutory damages for both public-records requests.

{¶ 57} Nevertheless, the majority denies Harris damages for both public-records requests. Concerning the 2024 request, the majority claims that the police department responded within a reasonable time after it *found* the request in its

spam-email folder. Similarly, the majority says that Harris is not entitled to damages for his 2025 request because he has not proved that he transmitted that request electronically.

{¶ 58} After examining this court’s caselaw and the evidence submitted by both parties, it is apparent that the majority’s conclusions are unreasonable. For ease of discussion, I address the public-records requests in reverse order.

C. Harris’s March 3, 2025 Public-Records Request

1. Harris Is Entitled to Statutory Damages for the Request

{¶ 59} In arguing that Harris is not entitled to statutory damages for his March 3, 2025 public-records request, the police department claims that Harris did not prove that the time it took the department to respond to the request was unreasonable. However, Linetsky admitted that he learned of the public-records request on March 26, 2025, after Harris filed the mandamus complaint. He admitted that he then reviewed the department’s email system and found both the 2024 and the 2025 requests. He admitted that it took him only a matter of days to compile the records that Harris asked for in both requests. And he admitted that the records responsive to both requests were sent to Harris on April 2, 2025.

{¶ 60} That means the department could have responded to Harris’s March 3, 2025 request by March 10. Therefore, when measured from the time the request was sent, the amount of time that it took the department to respond to Harris’s 2025 request—30 days—was patently unreasonable. *See Howard*, 2023-Ohio-3399, at ¶ 33.

{¶ 61} It strains credulity to think that Linetsky—the person responsible for responding to public-records requests sent to the police department—did not find or even know about either public-records request until he learned of Harris’s mandamus complaint “[o]n or about March 26, 2025.” The fact that it took almost a month for Linetsky, whose job it is to respond to emailed public-records requests, to find Harris’s March 2025 request languishing in the department’s inbox is

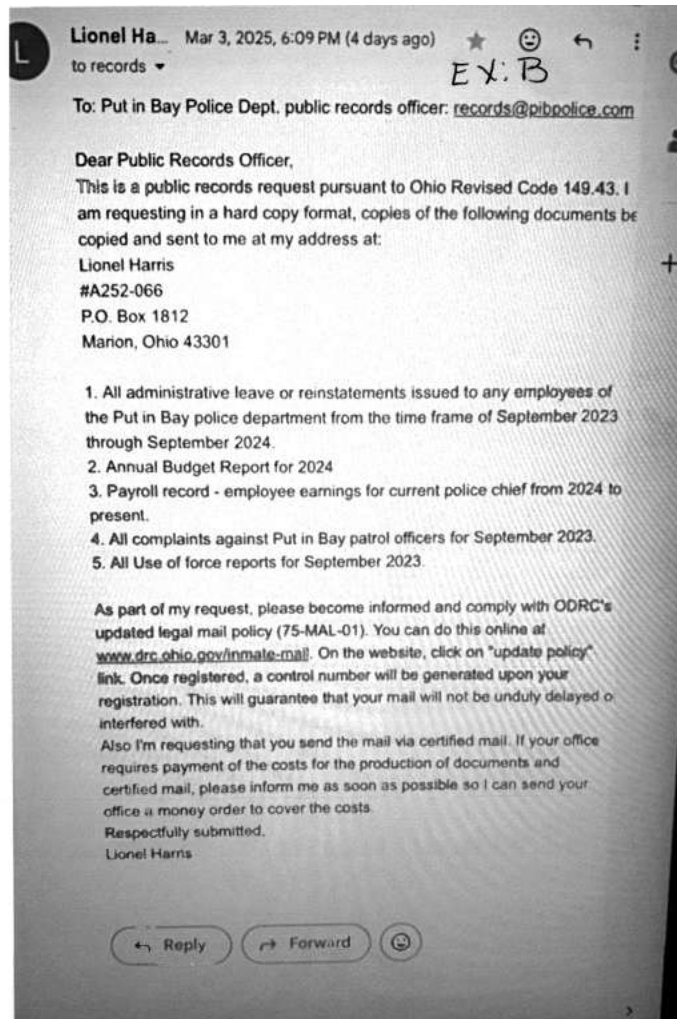
troubling. Apparently, the department does not regularly check its public-records-request email account to make a good-faith effort to respond to such requests within a reasonable time.

{¶ 62} Regardless, Linetsky's affidavit shows that the police department did not comply with its obligation under R.C. 149.43(B) to provide Harris with the requested records within a reasonable time. The department could have produced the records in a matter of days, so a month is too long.

{¶ 63} Because the police department's contention that its response time was reasonable is quickly dismissed by its own witness's averment, the majority creates a new argument to deny Harris statutory damages for his March 2025 public-records request. It says that Harris is not entitled to damages for that request because Harris failed to prove by clear and convincing evidence that he transmitted the request by hand delivery, certified mail, or electronic submission. *See* majority opinion, ¶ 30.

{¶ 64} Hogwash. It is right there in the evidentiary record.

{¶ 65} First, Harris attached a screenshot of his public-records request as exhibit B to his complaint:



That exhibit is a copy of a sent email. The dateline says it was sent “4 days ago,” and there are options to forward and reply to the email. As anyone with an email account knows, none of those items would be present on an unsent email. The sender is “Lionel Ha . . . ,” which obviously refers to Harris because his name is in the body of the email message.

{¶ 66} But even if there were some factual questions about this email, *the police department admits that it received the email*. In his affidavit, a portion of which is shown below, Linetsky referred to Harris’s exhibit B as an email:

7. I also worked in conjunction with the Solicitor for the Village of Put-in-Bay to assure that an appropriate response to the communication attached as Exhibit B to the Affidavit was made. This included analyzing whether any of the records requests contained in the email were objectionable, identifying and assembling documents which might be responsive to non-objectionable requests, drafting a written response, and transmitting the response and responsive documents to the requestor.

{¶ 67} The police department’s counsel similarly admitted that Harris transmitted his March 2025 public-records request by email. It is worth seeing the relevant portion of that letter a second time:

Lionel Harris
#A252-066
P.O. Box 1812
Marion, OH 43301

*Sent by Regular U.S. Mail and by Certified
Mail, Return Receipt Requested*

Re: Response to your March 3, 2025 email

Dear Mr. Harris:

I am the Solicitor for the Village of Put-in-Bay (“Village”).

This is a response to your March 3, 2025 email, in which you requested copies of the following records:

{¶ 68} Again, the letter says, “Response to your March 3, 2025 email” in the subject line. And the body of the letter says, “This is a response to your March 3, 2025 email, in which you requested copies of the following records”

{¶ 69} As this evidence shows, it is simply beyond dispute that Harris transmitted his March 2025 public-records request by email. The majority’s

contrary conclusion clearly and convincingly has no evidentiary basis whatsoever, and it is manifest that the majority has not examined the record closely enough.

{¶ 70} Since Harris transmitted his March 3, 2025 public-records request by email, fairly described the records sought, and has proved that the police department did not provide him with those records within a reasonable time, he is entitled to statutory damages for that request.

2. The Police Department's Admissions Prove Harris's Case

{¶ 71} The majority's assertions about this opinion are beyond perplexing. The police department's own admissions against interest make Harris's case.

{¶ 72} As explained above, the police department admitted that Harris transmitted his 2025 public-records request electronically. Linetsky admitted that he found Harris's 2025 request in the department's public-records email account 23 days after Harris transmitted it to the police department.

{¶ 73} That admission does not beg the question that the majority asks: Did Harris transmit his request by electronic means? Rather, it begs the question: In which folder of the police department's public-records-request email account was Harris's 2025 public-records request sitting for 23 days—was Harris's request in the inbox, or was it in the spam-email folder? Linetsky does not say. He admits only that he found the 2025 request in the police department's public-records email account. And the only way the request could have ended up in an email account is if it was electronically submitted in an email.

{¶ 74} Counsel for the police department also stated in her letter to Harris that she was responding to Harris's March 3, 2025 email request for public records. Notably, counsel did not state that she was responding to Harris's mandamus action. Moreover, even if one could interpret counsel's letter as responding to Harris's mandamus action, counsel admitted in that letter that Harris's request was transmitted by a qualifying method, "electronic submission," R.C. 149.43(C)(2), because she admitted that Harris's request was transmitted by email.

{¶ 75} Additionally, Linetsky admits that after finding Harris’s public-records request, it took him only seven days to review the request, determine whether any of the requested records were exempt from disclosure, identify and assemble the records, and provide the records to the police department’s counsel for release to Harris. And during the same seven days, Linetsky did the same for Harris’s 2024 public-records request. Therefore, Harris received the records responsive to both his public-records requests seven days after Linetsky discovered the requests in the police department’s email account. Given these admissions, it is beyond the pale for the majority to assert (1) that there is no evidence that the 2025 request was transmitted electronically and (2) that taking 30 days to respond to Harris’s request was reasonable. *See* majority opinion at ¶ 31-35. Indeed, the only way for the majority to reach those conclusions is to disregard all respondent’s admissions to the contrary regarding the former and conveniently ignore all evidence as to the latter. But picking and choosing evidence to fit a desired outcome is not the role of the judiciary.

{¶ 76} If the majority has considered “all the pertinent facts and circumstances,” *id.* at ¶ 34, quoting *Deters*, 2016-Ohio-8195, at ¶ 23, then in conjunction with the police department’s admissions, the majority must conclude that Harris is entitled to statutory damages for his 2025 public-records request.

D. Harris’s March 30, 2024 Public-Records Request

{¶ 77} As with the March 2025 public-records request, Linetsky and the police department’s counsel admit that Harris transmitted his March 30, 2024 request by email, and the department does not contend that Harris failed to fairly describe the requested records. Further, the department took an unreasonable amount of time to respond to the 2024 request. The Public Records Act “measures reasonableness of the response time by reference to the date of the request,” *Howard*, 2023-Ohio-3399, at ¶ 33, and here, Harris’s 2024 request sat in the department’s spam-email folder for over a year before being discovered. Since it

took only a matter of days for Linetsky to compile the requested records once the email was found, the department's delay of over a year in responding to the request was plainly unreasonable.

{¶ 78} The police department advances a novel theory in support of not awarding statutory damages to Harris for his March 2024 public-records request: it claims that Harris is not entitled to statutory damages because the Gmail account he used to send that request was set up using the name "Louise Thomas." The department argues that since the mandamus complaint does not contain any allegation that Harris was authorized to use the Gmail account associated with Thomas's name, Harris is not entitled to statutory damages for the public-records request he sent from that account. However, that argument is meritless.

{¶ 79} There is no statutory requirement that when a person transmits a public-records request electronically, he or she must submit it from an email account that bears his or her name. In fact, unless required by state or federal law, Ohio's Public Records Act specifically prohibits any public office or person responsible for public records to "condition the availability of public records by requiring disclosure of the requester's identity." R.C. 149.43(B)(4).

{¶ 80} Not to be deterred, the police department takes another tack, arguing that since Harris's March 2024 public-records request ended up in the department's spam-email folder, the time for responding to the request began when the email was found. The department notes that it quickly responded to Harris's March 2024 request upon discovering the email. The majority expounds on the department's reasoning, holding that Harris is not entitled to statutory damages for the 2024 request since the department responded within a reasonable time of finding his misplaced email. *See* majority opinion at ¶ 24-25.

{¶ 81} There are only two ways to characterize the majority's ruling today. Either it is rewriting R.C. 149.43 by starting the clock when the public-records request is found rather than when the request was made or it is judicially creating a

new “found later” exception to the Public Records Act for electronic transmissions. However it is characterized, the majority is wrong.

{¶ 82} First, R.C. 149.43 begins the clock for determining reasonableness at the date of the request. Second, the statute provides no applicable exception for the department. Third, in my opinion, this court has previously rejected the argument that misplacing a public-records request relieves a public office of its duty under the Public Records Act to respond to that request within a reasonable time. Fourth, the majority’s newly minted “found later” exception makes the requester, rather than the public office, bear the consequences of a custodian’s negligence in misplacing a public-records request. And fifth, the majority’s ruling invites speculation.

1. When the Clock Starts under R.C. 149.43

{¶ 83} As stated above, R.C. 149.43(B)(1) requires the production of public records “*upon request.*” (Emphasis added.) Therefore, “the statute measures reasonableness of the response time by reference to *the date of the request*” (emphasis added), *Howard*, 2023-Ohio-3399, at ¶ 33, not the date a public office *finds* the request.

2. No Applicable Statutory Exception

{¶ 84} Also as stated above, statutory damages are available if the requester fairly describes the requested records, transmits the request electronically, and shows that the public office did not respond to that request within a reasonable time. R.C. 149.43(C)(2). Importantly, to “transmit” something is to “send” it, *Webster’s Third New International Dictionary* (2002), which is dissimilar from “find,” *id.* (“to come upon accidentally...[or] by searching or effort”). Therefore, under the statute’s plain language, the availability of statutory damages does not depend on the records custodian’s finding the request.

{¶ 85} Further, nothing in the text of the Public Records Act expressly excuses a public-records custodian from fulfilling a public-records request that is

not found for over a year. The statute contains an extensive and comprehensive list of exceptions that preclude the release of records, *see* R.C. 149.43(A)(1)(a) through (ss), and it also includes provisions that reduce statutory damages or deny them altogether in some circumstances, *see* R.C. 149.43(C)(2)(a) and (b). But R.C. 149.43 “mandates access to public records upon request unless the requested records are specifically excepted from disclosure.” *State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Environmental Protection Agency*, 2000-Ohio-282, ¶ 12, and the department’s situation does not fit within one of the statutory exceptions. Nor is there a “found later” exception in the Public Records Act for emails.

{¶ 86} Although the majority seemingly views R.C. 149.43 as an evolving document in need of adaption to the modern era, there is no need to bring it in line with the times. The General Assembly clearly envisioned the electronic age since R.C. 149.43(C)(2) lists an “electronic submission” as a qualifying transmission. And even if a “found later” exception for electronic submissions is a good idea, “[a] judicially created ‘good sense’ rule does not except a public record from disclosure under R.C. 149.43,” *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 2008-Ohio-1770, paragraph three of the syllabus.

{¶ 87} In the end, creating a “found later” exception to the duty to provide copies of public records when such an exception does not appear in the statute is nothing more than a blatant exercise of judicial activism, “thrust[ing] the judiciary into the role of law maker,” Stefanie A. Lindquist, *Judicial Activism in State Supreme Courts: Institutional Design and Judicial Behavior*, 28 Stan.L. & Pol’y Rev. 61, 67 (2017).

3. *This Court’s Precedent Squarely Rejects a “Found Later” Exception*

{¶ 88} Moreover, in my view, this court has already categorically rejected a “found later” exception to the Public Records Act. In *State ex rel. Ware v. Akron*, a person requested records from the Akron Police Department in February 2019 by certified mail. 2021-Ohio-624, ¶ 2-3. The person who signed for the mail was ill

and subsequently died, and a “City-wide cyber-event . . . left email communication between city departments practically unusable.” *Id.* at ¶ 5. Consequently, the respondents in the case, the City of Akron and its police chief (“the city”), were unaware of the requests until the requester filed his complaint for a writ of mandamus in October 2019. *Id.* at ¶ 2, 4-5. Upon becoming aware of the requests, the city responded within four days. *Id.* at ¶ 6. The city acknowledged that a nine-month delay in responding to the requests was unreasonable but asked this court “to excuse its failure to respond timely” since the city did not know about the requests until after receiving the complaint. *Id.* at ¶ 18.

{¶ 89} This court rejected Akron’s argument, decided that the city had violated the Public Records Act, and awarded the requester statutory damages. As the court explained, “statutory-damages awards under the Public Records Act are not contingent on the good or bad faith of the public-records custodian. Rather, under R.C. 149.43(C)(2), statutory damages are mandatory whenever a public-records custodian fails to comply with her obligation.” *Id.* Therefore, the fact that the city misplaced the public-records request did not relieve the city of its duty to provide the requested records within a reasonable time of their transmission.

{¶ 90} Following the caselaw established by *Ware* makes deciding this case easy. Indeed, the only material variation between the situation in *Ware* and the one here is that *Ware* concerned a transmission sent by certified mail while Harris transmitted his request via email.

{¶ 91} I categorically reject the argument that how Harris transmitted his request changes the analysis. R.C. 149.43(C)(2) does not distinguish between certified mail and electronic submissions; it classifies both as qualifying methods of transmission warranting the same consideration for statutory damages. After all, “[t]he principle does not change because the [request] has gone from the physical to the virtual world.” *Moody v. NetChoice, L.L.C.*, 603 U.S. 707, 716 (2024) (discussing regulation of internet-based social-media platforms versus

“[t]raditional publishers and editors” in the context of the First Amendment). An email is just electronic mail.

{¶ 92} Consequently, *Ware* forecloses what the majority does here because in *Ware*, this court held that even with a misplaced request, the date to determine the reasonableness of the custodian’s response is not the date when the request was found. *See Ware*, 2021-Ohio-624, at ¶ 18. Accordingly, following *Ware*, this court should not “excuse [the police department’s] failure to respond timely” to Harris’s request, *id.* at ¶ 18. Like in *Ware*, the police department indisputably received Harris’s March 2024 public-records request but lost track of it. Like in *Ware*, the department has an excuse for not locating the request sooner, but that excuse is irrelevant because statutory-damages awards are not contingent on the good or bad faith of the public-records custodian. So, like in *Ware*, statutory damages are available to Harris because the department’s long delay in responding to the request was unreasonable.

{¶ 93} Because this court already rejected the “found later” exception in *Ware*, the court should reject that argument here and not revisit it simply because Harris utilized a different qualifying method of transmission.

4. The Majority Blames the Requester

{¶ 94} In creating a “found later” exception, the majority suggests that it is Harris’s fault that his public-records request was misdirected to the department’s spam-email folder. *See* majority opinion at ¶ 28. But a public-records requester has no control over whether a public office will misplace a public-records request upon receiving it.

{¶ 95} This is apparent here, as the responsibility for the misdirection of Harris’s 2024 request into the spam-email folder falls on the police department. The department, not Harris, set the inbox-control parameters on its public-records email account. If this court is to consider “all the ‘pertinent facts and circumstances,’” *id.* at ¶ 30, quoting *State ex rel. Morgan v. Strickland*, 2009-Ohio-

1901, ¶ 10, then it must acknowledge that an email account’s owner has control over the email account, including its security settings—from no filtering (delivering every email to the inbox) to the most restrictive filtering (delivering to the inbox only emails from a saved list of senders), and every security setting in between. *See* Google, *Add Custom Spam Filters to Gmail*, <https://support.google.com/a/answer/2368132?hl=en#zippy=%2Cchow-custom-spam-filters-are-applied%2Cfilter-behavior-with-multiple-filters> (accessed Feb. 5, 2026) [<https://perma.cc/9GVU-9FS9>]; Microsoft, *Change the Level of Protection in the Junk Email Filter in Outlook*, <https://support.microsoft.com/en-us/office/change-the-level-of-protection-in-the-junk-email-filter-in-outlook-e89c12d8-9d61-4320-8c57-d982c8d52f6b> (accessed Feb. 4, 2026) [<https://perma.cc/S88E-FNCK>]; Beverly Michaelis, *Zero Tolerance for E-Filing Errors: Avoid Committing Malpractice, with a Few Clicks of Your Mouse*, 72 Or.St.B.Bull. 46, 49 (2012).

{¶ 96} Harris plainly cannot adjust the “triggers” for the police department’s spam filter, *see* majority opinion at ¶ 28. Since the sender of an email (here, the public-records requester) has no control over the security settings of the receiving account (here, the police department’s public-records email account), we should not “let recipients of emailed notices avoid deadlines by blaming spam filters or other security devices on the recipient’s side of the communication,” *Balzer v. Northeast Illinois Regional Commuter R.R. Corp.*, 2026 IL App (1st) 232227, ¶ 53.

{¶ 97} Because the police department controls which public-records-request emails are classified as spam by its email system, it cannot absolve itself of the responsibility it faces under the Public Records Act for taking over a year to respond to Harris’s March 2024 public-records request, merely because its spam filter was too sensitive and it did not find the email sooner. Rather than blame Harris for the delayed response, the department should have changed the filter’s settings or been vigilant in periodically checking its spam-email folder to ensure

legitimate emails, like Harris’s, did not inadvertently get overlooked. This is especially true of an email account set up for the purpose of receiving public-records requests, like the one here. The department’s failure to show up, do its job, and check the entirety of such an email account shows a lack of cooperation that does not constitute even an attempt to respond to Harris’s request within a reasonable time.

5. *The Majority’s Speculation*

{¶ 98} As noted above, the misplacement of a public-records request does not absolve a public office of its statutory duty to respond to that request within a reasonable time of its transmission. Therefore, this court need not guess why Harris’s email was misplaced in the spam-email folder—that is irrelevant. However, that does not stop the majority from speculating how this occurred.

{¶ 99} The majority admits that “we don’t know exactly why the email went to the police department’s spam file.” Majority opinion at ¶ 28. Even though the department has the burden to prove that an exception under the Public Records Act applies to its delayed response in this case, *see State ex rel. Lawrence v. Dept. of Rehab. & Corr.*, 2026-Ohio-509, ¶ 31, and even though it asks this court to essentially adopt an exception based on the settings of its own spam filter, it has presented no evidence about those settings.

{¶ 100} However, the majority digs deeper, speculating that Harris’s March 2024 public-records request could have been classified as spam by the police department’s email system for a number of reasons, e.g., because he emailed his request from a contraband cellphone while in prison, because he used an email address affiliated with someone else’s name, because the email address he used lacked “proper authentication,” or because there was no “legitimate sender history” associated with the email address. *See* majority opinion at ¶ 28. But these are nothing more than red herrings.

{¶ 101} Take the majority’s hunch that the contraband cellphone “wasn’t registered to Harris,” *id.* at ¶ 28. The Public Records Act does not require a person to transmit a request using his or her own phone or computer. It requires only that the requester use a qualifying means of transmission. Moreover, the majority cannot even point to an FAQ somewhere that suggests that using a cellphone that is registered to a different person to send an email could trigger a spam filter. It is hard to imagine that a spam filter could discern that an email was sent by someone using a contraband cellphone, rather than a legitimately owned cellphone or a computer. Common sense dictates that that is highly unlikely, if not impossible. Harris may face collateral consequences for having and using a contraband cellphone while in prison, but the denial of statutory damages in a public-records case is not one of them.

{¶ 102} The majority next suggests that Harris triggered the spam filter by sending an email “from an email account with someone else’s name,” *id.* However, the majority fails to explain how a spam filter would weed out emails in which the signature in the email’s body conflicts with the name in the email’s address. It is common knowledge that many email platforms, including Gmail, allow users to create and send emails from an email account that does not identify the user by his or her legal name. Google Account Help, *About Your Legal Name & Your Google Account*, <https://support.google.com/accounts/answer/15566315?hl=en> (accessed July 6, 2026) [<https://perma.cc/LAD2-V8UP>] (“Your legal name isn’t necessarily the same as your display name. Your display name is the name you chose to use when you created your Google Account.”). While Google does require a legal name when setting up a Gmail account, a person’s display name does not need to be his or her legal name. *See id.*; Google Account Help, *Create a Google Account*, <https://support.google.com/accounts/answer/27441?sjid=15629715549374917244-NC> (accessed July 6, 2026) [<https://perma.cc/N8SM-ZRER>]. And a person’s “legal name will only be visible to others in . . . the Ads Transparency Center if [he

or she] purchase[s] Google Ads [or] [i]n the Play Store if [he or she is] a developer of a published app.” *About Your Legal Name & Your Google Account*, <https://support.google.com/accounts/answer/15566315?hl=en>. Neither of those apply here, meaning the department’s filtering system can only see the display name for any Gmail email it receives, not the legal name of the Gmail account holder.

{¶ 103} Therefore, it makes little sense for the majority to suggest that Harris’s March 2024 email was classified by the police department’s email-filtering system as “spam” simply because the email account’s display name was not Harris’s legal name.

{¶ 104} Next, the majority assumes that the police department’s spam-email filter may have been triggered because the email address from which Harris sent his public-records request may have lacked “proper authentication,” majority opinion at ¶ 28. This assumption is at least somewhat supported by a Mailchimp FAQ cited by the majority. *See id.* The problem is that the majority offers nothing but speculation that the email account associated with Thomas’s name had not been authenticated. And the majority does not explain how a Gmail account from which an email has been sent could even be unauthenticated. The Mailchimp FAQ explains that “[t]echnical factors like missing or incorrect SPF (Sender Policy Framework), DKIM (DomainKeys Identified Mail), or DMARC (Domain-based Message Authentication, Reporting, and Conformance) records signal to email providers that your message might not be legitimate.” MailChimp, *How Spam Triggers Impact Your Email Open Rates*, <https://mailchimp.com/resources/spam-triggers/> (accessed Jan. 5, 2026) [<https://perma.cc/G5T6-YQCK>]. It is highly doubtful that an email platform serving *millions of people* would be unable to produce authenticated emails. Surely its network administrators understand SPF, DKIM, and DMARC records better than the majority.

{¶ 105} The majority also hypothesizes that there was no “legitimate sender history,” majority opinion at ¶ 28. Legitimate sender history likely refers to an established track record and reputation of an email sender based on issues like the email’s domain, the internet-protocol address identifying from where the email was sent, or a specific email account and past interactions. Jesse Sumrak, *8 Ways to Check Your Email Sending Reputation*, <https://www.twilio.com/en-us/blog/insights/5-ways-check-sending-reputation> (accessed July 6, 2026) [<https://perma.cc/QP7J-5P63>]. As with the majority’s other claims, nothing in the record substantiates the suggestion that the email account from which Harris sent his March 2024 public-records request lacked a legitimate sender history. For all we know, Harris could have opened the Gmail account in Thomas’s name the same day he sent the email to the police department—in other words, the Gmail account may have had no sender history at all. Again, it is speculation across the board.

{¶ 106} Moreover, if a public office’s spam filters rely on a legitimate sender history, every time a person sends a public-records request to a public office for the first time from his or her email account, that email will be diverted from the recipient’s inbox to its spam-email folder. Once again, the requester has no control over a public office’s spam-filter settings; he or she has no way around them and no way of knowing whether they exist or what they are. But apparently to the majority, it is okay for a public office to filter out first-time emails from public-records requesters so long as the requester transmits his or her request from an email address that has never been used to request a record from that public office.

{¶ 107} So, while the majority tries to couch its argument in technical know-how, it is all just supposition and smoke and mirrors, alleviating the police department of its statutory duty while elevating its own preferred policy.

6. The Majority’s Other Arguments Fail

{¶ 108} The majority attempts to discredit this opinion’s reliance on *Ware*, 2021-Ohio-624, on the basis that “[t]o ‘misplace’ or ‘lose track’ of something, one

must be aware of the thing in the first place,” majority opinion at ¶ 27. But that is not an accurate restatement of this court’s reasoning in *Ware*, 2021-Ohio-624, or a faithful reading of the Public Records Act.

{¶ 109} In *Ware*, 2021-Ohio-624, this court did not award statutory damages because Ware proved that the police department knew about his public-records request when it was first received. Rather, this court awarded statutory damages because Ware proved that he had transmitted his public-records request by one of the qualifying methods—certified mail—and the city failed to respond to the request in a reasonable amount of time. *See id.* at ¶ 17, 21.

{¶ 110} What the city asked this court to do in *Ware*, 2021-Ohio-624, was create, by judicial fiat, a good-faith exception to its statutory duty under R.C. 149.43(B)(1) to produce a copy of the requested record “within a reasonable period of time.” Specifically, the city asked this court to hold that its response nine months after Ware sent his public-records request was “reasonable” because of all the intervening circumstances. *See Ware*, 2021-Ohio-624, at ¶ 18. In that vein, Harris’s case here is no different.

{¶ 111} In *Ware*, 2021-Ohio-624, the city essentially wanted this court to adopt a good-faith “found later” exception to the Public Records Act. And this court categorically rejected that request. Likewise, the majority should categorically reject that same request here.

{¶ 112} The majority can paint it any way it wants, but the fact of the matter is that the police department received Harris’s electronically transmitted March 2024 public-records request and failed to produce the requested record for well over nine months. Whether Harris’s email was sitting in the police department’s public-records-request email inbox or its spam-email folder is of no consequence. The police department once again made Harris’s case by making an admission against interest when it said that Harris electronically transmitted the 2024 request to its public-records email address.

{¶ 113} To receive statutory damages, Harris need only prove that he *transmitted* the request by a qualifying method and that the public office responsible for the requested record failed to comply with an obligation under R.C. 149.43(B). *See* R.C. 149.43(C)(2). Despite the majority’s arguments to the contrary, the Public Records Act does not require a requester seeking statutory damages to prove that the public office was “aware” of the request. *See* majority opinion at ¶ 25, fn. 3. Indeed, it would be odd to hold a requester to such a burden, because he or she has no authority over the public office.

{¶ 114} Similarly, the Public Records Act does not require a requester to prove delivery to obtain statutory damages, only that the request for records was *transmitted* by a qualifying method. *See* R.C. 149.43(C)(2). But even if it did require proof of delivery, the police department’s admissions against interest proved that for him. Despite the majority’s merry-go-round reasoning, the police department admitted that it received Harris’s March 2024 public-records request in *its* spam-email folder. The fact of the matter is that the request was delivered and in the possession of the police department *the whole time*. The police department and the majority’s reasoning that the fault lies with Harris for the email’s being found almost a year after it was sent strains credulity. Harris has no control over the police department’s email system just like Ware had no control over the police department’s handling of his certified-mail request, *see Ware*, 2021-Ohio-624. Consequently, the majority’s decision here to create by judicial fiat a “found later” exception defies logic and Ohio’s public-records law.

{¶ 115} Therefore, considering the record evidence, the Public Records Act, and this court’s caselaw, there is only one conclusion to reach: Harris is entitled to statutory damages for his 2024 public-records request.

III. CONCLUSION

{¶ 116} One hopes that the majority has simply misread the record, the Public Records Act, and our caselaw. However, the extremes the majority goes to

just to deny Harris statutory damages—ignoring what is clearly in the record and relying on pure speculation—appear results-oriented and directed at upholding its own policy preference regarding whether incarcerated people should be entitled to statutory damages.

{¶ 117} Rather than deal with assumptions or masquerade as information-technology experts, we should stick to our duty as judges and read statutes according to their plain language. *See State ex rel. Conrath v. LaRose*, 2022-Ohio-3594, ¶ 36 (Kennedy, J., dissenting). And here, the plain language simply requires Harris to show that he transmitted his public-records requests to the police department using a qualifying method (e.g., email), that he fairly described the records requested, and that the department failed to satisfy its obligation under R.C. 149.43(B) by not responding to the requests within a reasonable time. R.C. 149.43(C)(2). When analyzing R.C. 149.43’s plain language, this court has squarely rejected starting the clock at the time a public office finds a request or creating a “found later” exception, *see Howard*, 2023-Ohio-3399, at ¶ 33; *Ware*, 2021-Ohio-624, at ¶ 18, and that “principle does not change because the [request] has gone from the physical to the virtual world,” *Moody*, 603 U.S. at 716.

{¶ 118} Despite the statute’s plain language, the majority denies Harris damages for his 2024 request, going beyond interpreting the law to enacting its own policy decision, *see United States v. Temple*, 105 U.S. 97, 99 (1881); *Conrath* at ¶ 36 (Kennedy, J., dissenting), thereby judicially creating an entirely new exception to the production of records under the Public Records Act—an extra-statutory “found later” exception—allowing courts to deny statutory damages when a public-records-request email has been misdirected to a public office’s spam-email folder and not found until months after the request was transmitted.

{¶ 119} The majority’s holding “circumvents the public policy established by the General Assembly,” *Weidman v. Hildebrant*, 2024-Ohio-2931, ¶ 40 (Kennedy, C.J., dissenting). By establishing that what controls whether a public-

records custodian responds to a public-records request within a reasonable time is no longer the date when the requester transmits a request—as required by the statute—but rather when the public office finds a request, the majority encourages public offices to “game the system” by changing their email accounts’ settings to purposefully divert more emails to their spam-email folders, thereby intentionally causing unreasonable delays and providing stale information to requesters who need it. *See State ex rel. Griffin v. Sehlmeier*, 2021-Ohio-1419, ¶ 22, quoting R.C. 149.43(C)(2) (“The purpose of awarding statutory damages is to provide ‘compensation for injury arising from lost use of the requested information.’”).

{¶ 120} Harris met his statutory burden. The police department admits that Harris transmitted his March 2025 public-records request by email. And the fact that Harris’s March 2024 email was diverted to the department’s spam-email folder and not found for nearly a year is not a valid defense against a request for statutory damages. Since Harris filed his mandamus complaint on March 13, 2025, and the police department did not respond to his public-records requests until April 2, 2025, more than ten business days passed between the filing of this mandamus action and the department’s compliance with its obligation under R.C. 149.43(B). *See* R.C. 149.43(C)(2). Consequently, Harris is entitled to the maximum amount of damages provided by statute: \$2,000. *See id.*

{¶ 121} Despite evidence in the record, the statute’s plain language, and this court’s caselaw, the majority has decided to deny Harris’s request for statutory damages. Therefore, while I concur in the court’s judgment denying the writ as moot and its decision denying Harris’s request for court costs, I dissent from the majority’s decision denying Harris’s request for statutory damages.

Lionel Harris, pro se.

Spengler Nathanson, P.L.L., and Teresa L. Grigsby, for respondent.
