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SLIP OPINION NO. 2026-OHIO-3805

THE STATE EX REL. UTZ v. THE CITY OF CINCINNATI ET AL.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Utz v. Cincinnati*, Slip Opinion No. 2026-Ohio-3805.]

Mandamus—Public-records requests—R.C. 149.43—Despite receiving requested records, relator seeks writ compelling city to provide an explanation, including legal authority, for initially denying his public-records requests—Relator’s request for writ is moot because city provided requested records after relator filed complaint—City’s delay in providing statutorily compliant explanation for denying relator’s public-records requests does not by itself entitle him to statutory damages, because R.C. 149.43(B)(3) does not require that denial be prompt—Writ denied as moot—Relator’s requests for statutory damages, attorney fees, and court costs denied.

(No. 2025-1148—Submitted June 30, 2026—Decided September 30, 2026.)

IN MANDAMUS.

The per curiam opinion below was joined by FISCHER, DEWINE, BRUNNER, DETERS, HAWKINS, and SHANAHAN, JJ. KENNEDY, C.J., concurred in part and dissented in part and would consider relator’s requests for statutory damages and court costs under this court’s precedent in *State ex rel. Cordell v. Paden*, 2019-Ohio-1216.

Per Curiam.

{¶ 1} Relator, Eugene Utz, brings this public-records mandamus action against respondents, the City of Cincinnati and its solicitor, Emily Smart Woerner (collectively, “the city”). Utz requested to inspect and to be provided with copies of all filings and entries in a criminal case that was pending in the Hamilton County Municipal Court. The city initially “declined” Utz’s requests, informing him that the requested records were subject to a pending motion to seal in the municipal court and that the municipal court was to consider that motion at an upcoming hearing. A few days later—but not before Utz filed this mandamus action—the city provided the requested records to Utz with the limited redactions ordered by the municipal court at the hearing.

{¶ 2} While conceding that he has now received the requested records, Utz nevertheless seeks a writ of mandamus compelling the city to provide an explanation, including legal authority, for initially denying his requests. He further seeks awards of statutory damages, attorney fees, and court costs. For the reasons explained below, we deny as moot Utz’s request for a writ of mandamus. We also deny his requests for awards of statutory damages, attorney fees, and court costs.

I. FACTS AND PROCEDURAL HISTORY

{¶ 3} On August 28, 2025, Utz’s attorney delivered two written public-records requests to the city on Utz’s behalf. Both requests pertained to a criminal case that was pending in the municipal court against a person named Alexander Tchervinski. Tchervinski was involved in an incident that occurred in downtown

Cincinnati in July 2025—an incident that became the subject of significant public interest—and was later charged in connection with that incident. The first request sought inspection of “all filings or entries in” Tchervinski’s case “made or received by” the solicitor’s office, and the second request sought copies of the same records.

{¶ 4} The city denied both requests on the same day that they were made. The next day, August 29, Utz’s attorney further discussed the requests with the solicitor’s office, which resulted in a deputy solicitor sending the following email to Utz’s attorney that day:

Per our conversation earlier, I am writing to confirm that the City of Cincinnati declines your request for copies or the inspection of “all filings or entries in [Tchervinski’s case] made or received by the Office of the Cincinnati City Solicitor.” Whether these records may be produced is currently a question being determined by the [municipal court] following the City’s filing of a motion pursuant to [Rule 11.14] of the Rules of Superintendence for the Courts of Ohio, and a hearing on this matter has been set for September 8, 2025.¹

{¶ 5} Utz filed this mandamus action on September 5, claiming that the city had failed to comply with its obligations under Ohio’s Public Records Act, R.C. 149.43,² by failing to permit prompt inspection of the requested records or to provide copies of the requested records within a reasonable time and by denying

1. The Rules of Superintendence were restructured effective July 1, 2026. Supreme Court of Ohio, *Rules of Superintendence Restructuring*, <https://www.supremecourt.ohio.gov/courts/courts-rules/rules-of-superintendence-restructuring/> (accessed July 29, 2026) [<https://perma.cc/4A5A-PHLQ>]. References to the Rules of Superintendence in this opinion are to the Rule numbers as restructured.

2. The General Assembly has recently amended R.C. 149.43, most notably in 2024 Sub.H.B. No. 265 (effective Apr. 9, 2025), and some provisions have been renumbered. When this opinion refers to former versions of R.C. 149.43, it is referring to the statute as it existed before these amendments.

his records requests without providing an explanation including legal authority. On these bases, Utz seeks a writ of mandamus compelling the city (1) “to allow the prompt inspection and to provide copies of” the requested records and (2) to provide legal authority for denying his requests for inspection and for copies of the requested records. He further seeks awards of statutory damages, attorney fees, and court costs.

{¶ 6} On the next business day, September 8, the municipal-court hearing on the city’s Sup.R. 11.14 motion went forward, and that court ultimately ordered limited redactions of Tchervinski’s personally identifying information, such as his address, date of birth, and phone number, from the records in his case. The court indicated, however, that the municipal-court clerk “shall not seal” the records in Tchervinski’s case. That afternoon, the city provided Utz with copies of the requested filings and entries from Tchervinski’s case, and those copies included the limited redactions ordered by the municipal court.

{¶ 7} The city filed an answer to Utz’s complaint, and after the parties’ unsuccessful attempt at mediation, *see* 2025-Ohio-5037; 2025-Ohio-5395, we granted an alternative writ, 2026-Ohio-156. The parties submitted evidence and merit briefs, and Utz filed a reply brief.

II. ANALYSIS

A. We deny the requested writ of mandamus as moot

{¶ 8} In his complaint, Utz requests a writ of mandamus compelling the city (1) “to allow the prompt inspection and to provide copies of” the requested records and (2) to provide legal authority for denying his requests for inspection and for copies of the requested records. A writ of mandamus “is an appropriate remedy by which to compel compliance with the Public Records Act.” *State ex rel. Huth v. Animal Welfare League of Trumbull Cty., Inc.*, 2022-Ohio-3583, ¶ 8. However, if the public office provides the records at issue after the requester has filed a complaint for a writ of mandamus, the requester’s mandamus claim is generally

rendered moot. *State ex rel. Martin v. Greene*, 2019-Ohio-1827, ¶ 7; *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 2008-Ohio-6253, ¶ 43. Such is the case here.

{¶ 9} The evidence submitted in this action demonstrates that the city provided Utz with copies of the requested records on September 8. Utz does not contend otherwise; indeed, Utz acknowledges in his merit brief that “in light of the eventual production . . . of the public records at issue herein, the claim for a writ of mandamus to compel production of such records has become moot.”³ We therefore deny as moot Utz’s request for a writ of mandamus compelling the city to allow inspection and to produce copies of the requested records. *See State ex rel. Ames v. Concord Twp. Bd. of Trustees*, 2025-Ohio-1027, ¶ 33 (“upon finding that a writ claim is moot, the correct disposition is to deny the writ”).

{¶ 10} We likewise deny as moot Utz’s request for a writ of mandamus compelling the city to “provide legal authority for denying” his requests in compliance with R.C. 149.43(B)(3). To the extent that the city initially denied Utz’s requests to inspect and for copies of the filings and entries in Tchervinski’s case—a question discussed further below—it effectively rescinded those blanket denials when it produced redacted copies of the requested records on September 8. Utz does not take issue with those redactions. Thus, even if the city’s initial denials failed to provide an explanation sufficient to comply with R.C. 149.43(B)(3), requiring the city to provide such an explanation at this juncture would accomplish nothing. *See State ex rel. Burkons v. Beachwood*, 2022-Ohio-748, ¶ 14 (explaining that mandamus will not issue when that relief “would not affect the outcome” of the underlying dispute).

3. Though this statement might be interpreted as applying only to Utz’s claim for copies of the requested records—thereby preserving his claim for inspection—Utz makes clear elsewhere in his merit brief that he no longer asserts a right to inspect those records.

B. Statutory damages, attorney fees, and court costs

{¶ 11} Although a public office’s postcomplaint production of the requested records renders a requester’s claim for a writ of mandamus moot, *Martin*, 2019-Ohio-1827, at ¶ 7, it does not necessarily moot a requester’s requests for awards of statutory damages, attorney fees, and court costs, *see State ex rel. Woods v. Lawrence Cty. Sheriff’s Office*, 2023-Ohio-1241, ¶ 7. We nevertheless deny Utz’s requests for those awards for the following reasons.

1. Utz’s request for an award of statutory damages

{¶ 12} Under R.C. 149.43(C)(3), “[a] public-records requester shall be entitled to statutory damages if (1) he transmitted a written public-records request by hand delivery, electronic submission, or certified mail, (2) he made the request to the public office or person responsible for the requested records, (3) he fairly described the records sought, and (4) the public office failed to comply with an obligation under R.C. 149.43(B).” *State ex rel. Grim v. New Holland*, 2024-Ohio-4822, ¶ 6, citing former R.C. 149.43(C)(2). There is no dispute that Utz has established the first three requirements. As to the fourth, Utz contends that the city failed—and continues to fail—to comply with R.C. 149.43(B)(3). That provision provides that “[i]f a request is ultimately denied, in part or in whole, the public office . . . shall provide the requester with an explanation, including legal authority, setting forth why the request was denied.” R.C. 149.43(B)(3).

{¶ 13} Utz argues that the city failed to comply with this obligation when it denied his requests through the deputy solicitor’s August 29 email.⁴ Specifically, Utz contends that, although the deputy solicitor provided an “explanation” in the email, the deputy solicitor failed to cite any legal authority for the proposition that

4. Although Utz elsewhere in his merit brief suggests that the city failed to comply with other obligations imposed by R.C. 149.43(B), including its obligations to “promptly” permit inspection and to provide copies of the requested records within a “reasonable period of time,” his request for damages is “[s]pecifically” predicated on the city’s alleged failure to “provide any legal authority” in accordance with R.C. 149.43(B)(3).

the filing of a Sup.R. 11.14 motion justifies a public office’s denial of a request for records encompassed by that motion. The city, on the other hand, contends that it never denied Utz’s requests; rather, it suggests that the August 29 email merely informed Utz that his requests were “under legal review”—thereby contemplating further action—pending the outcome of the hearing on the city’s Sup.R. 11.14 motion.

{¶ 14} We need not specifically resolve that dispute. This is because, even if (1) the deputy solicitor’s August 29 email constituted denial of Utz’s requests and (2) the denial failed to comply with R.C. 149.43(B)(3), the city effectively rescinded the denials of Utz’s requests when it provided redacted copies of the requested records on September 8. Thus, the most Utz may claim is that the city failed to provide a statutorily compliant explanation for denying the requests for an eleven-day period. However, we have held that a public office’s “delay in providing . . . an explanation for its denial does not by itself entitle” the requester to an award of statutory damages, because “R.C. 149.43(B)(3)—unlike R.C. 149.43(B)(1)—does not contain a requirement that the denial be ‘prompt.’” *State ex rel. Myers v. Myers*, 2022-Ohio-1915, ¶ 73, citing *State ex rel. Ware v. Giavasis*, 2020-Ohio-3700, ¶ 12. We therefore deny Utz’s request for an award of statutory damages based on the city’s delay in providing a statutorily compliant explanation for denying Utz’s records request.

2. *Utz’s request for an award of attorney fees*

{¶ 15} Utz also seeks an award of attorney fees. We have “consistently held that an award of attorney fees under [R.C. 149.43(C)(4)(b)] is discretionary.” *State ex rel. Gilreath v. Cuyahoga Job & Family Servs.*, 2024-Ohio-103, ¶ 42 (considering former R.C. 149.43(C)(3)(b)). R.C. 149.43(C)(4)(b) outlines four situations in which the court may consider an award of reasonable attorney fees; Utz argues that we should award attorney fees under two of them.

{¶ 16} First, a court may award attorney fees if it “renders a judgment that orders the public office or the person responsible for the public record to comply with” R.C. 149.43(B). R.C. 149.43(C)(4)(b). While he acknowledges that the city has provided him with the requested records, Utz argues that attorney fees are warranted under R.C. 149.43(C)(4)(b) because this court should order the city to “set forth the specific legal authority upon which” it denied Utz’s request. As explained above, we decline to issue any such order. Thus, an award of attorney fees under R.C. 149.43(C)(4)(b) is not warranted.

{¶ 17} Second, a court may award attorney fees if it finds that the public office “acted in bad faith” by “voluntarily ma[king] the public records available to the [requester] for the first time after the [requester] commenced the mandamus action.” R.C. 149.43(C)(4)(b)(iii). However, “bad faith may not be presumed based solely on the fact that the public office has made a record available after the mandamus complaint is filed. To prove bad faith, the party seeking [attorney] fees must produce some evidence of bad faith other than the fact that the record was produced” following the commencement of the mandamus action. *State ex rel. Pool v. Sheffield Lake*, 2023-Ohio-1204, ¶ 33; *accord* R.C. 149.43(C)(4)(b)(iii).

{¶ 18} Utz argues that bad faith is evident here based on the broader public-interest implications of Tchervinski’s case and the city’s “avoidance of providing any records.” It is worth noting, however, that the city “avoid[ed]” providing the requested records for, at most, 11 days, after promptly explaining to Utz that the municipal court would be considering “[w]hether [those] records may be produced” at a hearing on September 8. On the same day that the municipal court ordered limited redactions of the records in Tchervinski’s case, the city provided redacted records to Utz. And as the city points out, the only reason R.C. 149.43(C)(4)(b)(iii) is even potentially applicable is because Utz filed his complaint the Friday before the Monday hearing, despite knowing, based on his attorney’s communication with the city, that the hearing was scheduled to occur.

{¶ 19} We need not decide whether the city was legally justified in withholding the requested records for 11 days, because its conduct does not evince the dishonest purpose, moral obliquity, or conscious wrongdoing connoted by the term “bad faith.” *See State ex rel. McDougald v. Greene*, 2020-Ohio-3686, ¶ 26. An award of attorney fees under R.C. 149.43(C)(4)(b)(iii) is therefore not warranted.

3. Utz’s request for an award of court costs

{¶ 20} An award of court costs is mandatory if the court either orders the public office to comply with R.C. 149.43(B), *see* R.C. 149.43(C)(4)(a)(i), or determines that the public office acted in bad faith by producing the requested records after the mandamus action was filed, *see* R.C. 149.43(C)(4)(a)(ii). Although Utz requested an award of court costs in his complaint, he does not attempt to explain in his merit brief why he is entitled to such an award. In any event, as explained above, neither of the triggering circumstances in R.C. 149.43(C)(4)(a) that Utz relies on are present here. Thus, we deny Utz’s request for an award of court costs. *See* S.Ct.Prac.R. 18.05(A)(2)(b) (providing that, in an original action when a request for a writ is denied, court costs should be assessed to the relator).

III. CONCLUSION

{¶ 21} For the foregoing reasons, we deny as moot Utz’s request for a writ of mandamus. We also deny his requests for awards of statutory damages, attorney fees, and court costs.

Writ denied as moot.

The Law Firm of Curt C. Hartman and Curt C. Hartman; and Finney Law Firm and Christopher P. Finney, for relator.

Emily Smart Woerner, Cincinnati City Solicitor, and Shuva J. Paul, Assistant City Solicitor, for respondents.

SUPREME COURT OF OHIO
