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SLIP OPINION NO. 2026-OHIO-4524

THE STATE EX REL. AMES, APPELLANT, *v.* NORTHFIELD CENTER TOWNSHIP BOARD OF TRUSTEES ET AL., APPELLEES.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Ames v. Northfield Ctr. Twp. Bd. of Trustees*, Slip Opinion No. 2026-Ohio-4524.]

Mandamus—Public-records requests—R.C. 149.43—Appellees provided appellant with record that had been redacted in accordance with Ohio law and explained the redactions before appellant filed mandamus action—Appellant not entitled to statutory damages or court costs—Court of appeals' judgment on pleadings in favor of appellees affirmed.

(No. 2025-1548—Submitted August 4, 2026—Decided November 18, 2026.)

APPEAL from the Court of Appeals for Summit County,
No. 31323, 2025-Ohio-5115.

The per curiam opinion below was joined by FISCHER, DEWINE, BRUNNER, DETERS, HAWKINS, and SHANAHAN, JJ. KENNEDY, C.J., concurred in judgment

only, with an opinion.

Per Curiam.

{¶ 1} Appellant, Brian M. Ames, appeals the Ninth District Court of Appeals' judgment on the pleadings in favor of appellees, Northfield Center Township Board of Trustees ("board") and Baker Dublikar law firm. Ames contends that the court of appeals erred in denying him statutory damages and court costs under the Public Records Act, R.C. 149.43. We affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

{¶ 2} Ames was the plaintiff in a civil action against the board in the Summit County Court of Common Pleas alleging that the board had violated the Open Meetings Act, R.C. 121.22 (the "open-meetings case"). Upon being sued, the board filed a claim with Public Entity Risk Services of Ohio ("PERSO"), an entity that provides claims-handling services for the Ohio Township Association Risk Management Authority ("OTARMA") and its members. OTARMA is a government risk-sharing pool whose members consist solely of Ohio townships. Baker Dublikar was retained as counsel to defend the board against Ames's lawsuit.

{¶ 3} On December 16, 2024, Ames emailed the board's administrator a public-records request asking for copies of "the invoices for legal services provided in [the open-meetings case]." On the morning of December 19, 2024, Tim Black, the director of services for the township, responded to Ames by email. Black attached to his email a redacted copy of an invoice for legal services rendered by Baker Dublikar through November 4, 2024, in the open-meetings case. The dates that the services were provided, names of service providers, narrative descriptions of the services provided, hours worked each day, and hourly rates were redacted; the total number of hours worked and total amount charged for Baker Dublikar's services were not redacted. The township had obtained the redacted copy from Baker Dublikar and, in turn, provided it to Ames in response to his public-records

request. Ames responded to Black a half hour later, asserting that only the narrative-description-of-services sections of the invoice should have been redacted.

{¶ 4} A short time later, Baker Dublikar addressed Ames's assertion in an email sent to the attorney who represented Ames in the open-meetings case. Citing *State ex rel. Pietrangelo v. Avon Lake*, 2016-Ohio-2974, Baker Dublikar explained that the redactions to the copy produced to Ames were proper because the invoice related to pending litigation between Ames and the board. In *Pietrangelo*, we observed that the portion of an invoice summarizing the hours, rate, and money charged for services to a public entity was not exempt from disclosure under R.C. 149.43. *Id.* at ¶ 5, 17. But the public entity was permitted to redact the dates, hours, and rates not identified in the professional-fee summary when the requester was an opposing party in pending litigation. *Id.* at ¶ 16-17. Thus, Baker Dublikar took the position that the redactions to the copy produced to Ames were proper under the Public Records Act. The board separately forwarded Baker Dublikar's email directly to Ames.

{¶ 5} That same day, Ames filed a complaint for a writ of mandamus in the Ninth District Court of Appeals, alleging a violation of the Public Records Act, R.C. 149.43. Asserting that "[n]o explanation or legal authority for the redactions was provided with" the response to his public-records request, Ames contended that the board and Baker Dublikar had failed to comply with their obligation under R.C. 149.43(B).[1] Ames sought a writ of mandamus ordering production of unredacted

1. Ames also named PERSO and OTARMA as respondents, but he later stipulated to their dismissal with prejudice.

copies of the records he had requested and awards of statutory damages and court costs.[2]

{¶ 6} The board and Baker Dublikar filed answers to Ames's complaint.[3] Both the board and Baker Dublikar raised mootness as an affirmative defense. In support of its mootness defense, the board revealed that on January 17, 2025, four weeks after Ames commenced his mandamus action, Baker Dublikar provided Ames with another copy of the invoice he requested. The copy provided on January 17 redacted only the narrative sections describing the legal services provided to the board in the open-meetings case. Baker Dublikar maintained that the redactions in the previous copy sent to Ames were proper but that it was providing the less redacted copy "in good faith to resolve the purported dispute." Baker Dublikar therefore suggested that the appropriate step was for Ames to dismiss the mandamus case.

{¶ 7} Rather than dismiss the case, Ames filed separate motions for judgment on the pleadings against the board and Baker Dublikar. Ames agreed that his mandamus claim was moot because the document provided to him on January 17, 2025, satisfied his public-records request. However, Ames argued that the issues of statutory damages and court costs remained to be decided and that he was entitled to judgment on the pleadings as to his entitlement to both. The board and

2. Ames also requested attorney fees. The court of appeals denied Ames's request for attorney fees because Ames proceeded pro se in this case. 2025-Ohio-5115 at ¶ 20 (9th Dist.). Ames did not appeal that aspect of the court of appeals' decision.

3. Baker Dublikar, a private law firm, does not contend that it is not a public office for purposes of the Public Records Act. In a previous case involving Baker Dublikar, we observed that private entities are subject to suit under the Public Records Act under a quasi-agency test. *See State ex rel. Ames v. Baker, Dublikar, Beck, Wiley & Mathews*, 2022-Ohio-3990, ¶ 10. Under that test, when a requester has proved that the private entity prepared records to carry out the public office's responsibilities, the requester has established that the documents related to the delegated functions are public records. *Id.* at ¶ 7, citing *State ex rel. Armatas v. Plain Twp. Bd. of Trustees*, 2021-Ohio-1176, ¶ 16.

Baker Dublikar opposed Ames's motions and filed their own motions for judgment on the pleadings.

{¶ 8} The court of appeals denied Ames's motions for judgment on the pleadings and granted the motions of the board and Baker Dublikar. 2025-Ohio-5115, ¶ 1 (9th Dist.). In a unanimous decision, the court of appeals held that the redactions made to the invoices were proper and that the board had properly explained the redactions. *Id.* at ¶ 13-17. The court of appeals therefore denied statutory damages and court costs. *Id.* at ¶ 19, 22.

{¶ 9} Ames appealed to this court as of right. At issue is whether the court of appeals erred in denying Ames's request for awards of statutory damages and court costs.

II. ANALYSIS

{¶ 10} We review de novo a decision granting a Civ.R. 12(C) motion for judgment on the pleadings. *State ex rel. Harris v. Schwendeman*, 2025-Ohio-4769, ¶ 10. Granting a motion for judgment on the pleadings under Civ.R. 12(C) is proper when there are no material disputes of fact and when the court determines, after construing all material allegations in the complaint as true, that the plaintiff or relator can prove no set of facts that would entitle him to the relief sought. *State ex rel. Mancino v. Tuscarawas Cty. Court of Common Pleas*, 2017-Ohio-7528, ¶ 8.

{¶ 11} "[A] court's determination of a Civ.R. 12(C) motion for judgment on the pleadings must be restricted solely to the allegations in the pleadings," which may include "'written instrument[s]' attached to a pleading." *State ex rel. McCarley v. Dept. of Rehab. & Corr.*, 2024-Ohio-2747, ¶ 13, quoting Civ.R. 10(C). In ruling on the parties' motions for judgment on the pleadings, the court of appeals considered attachments to the answers of Baker Dublikar and the board, namely, emails that they had sent to Ames that explained the redactions to the invoices provided to Ames in response to his public-records request. Ames does not challenge the court of appeals' consideration of these materials in its determination

of the parties' motions for judgment on the pleadings. Indeed, Ames himself contended that the court of appeals could consider the exhibits attached to the answers in ruling on his motion for judgment on the pleadings below. We therefore consider the exhibits attached to the board's and Baker Dublikar's answers without deciding whether they were properly deemed by the court of appeals to be part of the pleadings. *See Harris* at ¶ 12 (holding that the relator invited the court of appeals' reliance on materials outside the pleadings when he also submitted evidence for the court's consideration on a Civ.R. 12(C) motion).

A. Statutory Damages

{¶ 12} Under the version of the Public Records Act applicable in this case,[4] a requester who submits a written request by electronic submission may recover statutory damages if a court determines that a public-records custodian failed to comply with an obligation set forth in R.C. 149.43(B). *See* R.C. 149.43(C)(2). Here, there is no dispute that Ames sent his public-records request by electronic transmission. Ames's entitlement to recover statutory damages depends on whether the redactions made to the record provided to him were proper under R.C. 149.43(B). *See State ex rel. Brinkman v. Toledo City School Dist. Bd. of Edn.*, 2024-Ohio-5063, ¶ 31 (the relator was entitled to statutory damages when the respondent improperly redacted a portion of a public record).

{¶ 13} A public office is required to make available copies of a public record to any person upon request and must do so within a reasonable period. R.C. 149.43(B)(1). If a request is denied "in part or in whole," the records custodian must provide the requester with an explanation. R.C. 149.43(B)(3). "A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if

4. After Ames filed his complaint in the court of appeals, the General Assembly amended R.C. 149.43, most notably in 2024 Sub.H.B. No. 265 (effective Apr. 9, 2025), and some provisions have been renumbered. This opinion applies the version of the statute enacted in 2024 Sub.S.B. No. 29 (effective Oct. 24, 2024).

federal or state law authorizes or requires a public office to make the redaction." R.C. 149.43(B)(1). When information is redacted from records produced in response to a public-records request, the public office must show that the information falls squarely within an exemption to disclosure. *State ex rel. Mauk v. Sheldon*, 2025-Ohio-5611, ¶ 15.

1. Proper Redactions of Invoices for Legal Services

{¶ 14} In rejecting the argument that the board had redacted too much information in the Baker Dublikar invoice it produced to Ames, the court of appeals relied on our decision in *Pietrangelo*, 2016-Ohio-2974. 2025-Ohio-5115, ¶ 13-14 (9th Dist.). On appeal, Ames argues that the court of appeals erred in its analysis because *Pietrangelo* was superseded by *State ex rel. Ames v. Baker, Dublikar, Beck, Wiley & Mathews*, 2022-Ohio-3990. Ames is wrong.

{¶ 15} In *Pietrangelo*, the relator requested a city's invoices from a law firm for services rendered in a pending litigation between the relator and the city. *Id.* at ¶ 2. The city provided copies of responsive records; however, invoking the attorney-client privilege, the city redacted narrative descriptions of the legal services provided, the dates on which the services were rendered, the name of the particular attorney providing the service, the time spent on a particular day, the billing rate of the particular attorney, the total number of hours billed by each attorney, and the total fees attributable to each attorney for the period covered by the invoice. *Id.* Pietrangelo sought a writ of mandamus in the court of appeals, seeking unredacted invoices and statutory damages. *Id.* at ¶ 3. The court of appeals granted the writ, but not to the extent Pietrangelo wanted: the court of appeals found all redactions proper except the portion of each invoice entitled "Professional Fee Summary," which described the hours, rate, and money charged for the law firm's services. *See id.* at ¶ 5.

{¶ 16} We affirmed. Our case law at that time had established that "the narrative portions of itemized attorney-fee billing statements containing descriptions

of legal services performed by counsel are protected by the attorney-client privilege" and exempt from public-records disclosure. *See id.* at ¶ 10, citing *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 2011-Ohio-6009, ¶ 28-29, and *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 2012-Ohio-4246, ¶ 36. But other information on the billing statements, such as "the general title of the matter being handled, the dates the services were performed, and the hours, rates, and money charged for the services," were not necessarily exempt from disclosure. *Id.*, citing *State ex rel. Anderson v. Vermilion*, 2012-Ohio-5320, ¶ 15. In *Pietrangelo*, however, we held that this other information was also exempt from disclosure in that case because the invoices related "to the pending litigation between the parties." *Id.* at ¶ 16. In such a situation, the information is exempt from disclosure because "the date, hours, and rates not identified in the professional-fee summary . . . are inextricably intertwined with the narratives of services that are privileged materials." *Id.* at ¶ 17. Accordingly, such information is privileged and, therefore, may properly be redacted. *Id.*; *see also Dawson* at ¶ 29.

{¶ 17} This case is indistinguishable from *Pietrangelo*. Ames requested invoices for legal services rendered to a party adverse to Ames in pending litigation. The board produced a responsive record that redacted the same categories of information that were redacted in *Pietrangelo*: the board redacted the narrative descriptions of the legal services provided, the dates on which the services were rendered, the names of the attorneys who provided the services, the time the attorneys spent on the case on a particular day, and the hourly rates charged; the board did not redact the total number of hours worked or the total amount billed. Under *Pietrangelo*, the board's redactions did not violate R.C. 149.43(B).

{¶ 18} Ames argues, however, that our decision in *Ames* superseded *Pietrangelo*. In *Ames* (which likewise involved Ames and Baker Dublikar as parties), Ames sought copies of invoices for legal services provided to a township board of trustees in litigation against Ames. When Baker Dublikar produced redacted copies,

Ames filed a complaint in the court of appeals, seeking a writ of mandamus ordering Baker Dublikar to produce unredacted copies of the invoices. *Ames*, 2022-Ohio-3990, at ¶ 5. After the court of appeals dismissed Ames's complaint under Civ.R. 12(B)(6), we reversed, holding that the court had misapplied the Civ.R. 12(B)(6) standard by failing to presume the truth of Ames's factual allegation that the respondents had redacted nonprivileged portions of the invoices. *Id.* at ¶ 17-18. We therefore remanded the case to the court of appeals with instructions to conduct an in camera inspection of the contested invoices. *Id.* at ¶ 18. Contrary to Ames's argument, however, our decision contained no language that superseded the rule from *Pietrangelo* as to the proper extent of redactions to invoices for legal services that are produced in response to a public-records request.

{¶ 19} Ames also argues that the board and Baker Dublikar "abandoned" their reliance on *Pietrangelo* when they produced a second copy of the requested invoice on January 17, 2025, with redaction of only the narrative sections describing the legal services provided to the board in the open-meetings case. But this argument is also without merit. Baker Dublikar maintained that the redactions in the previous copy sent to Ames were proper and indicated that it was providing the updated, less redacted copy in an effort to resolve the dispute. The fact that a copy with fewer redactions was later produced does not mean that the redactions in the earlier copy provided to Ames were improper. As indicated above, the copy that the board first provided to Ames on December 19, 2024, was appropriately redacted under *Pietrangelo*.

{¶ 20} Accordingly, Ames has failed to show that the board or Baker Dublikar improperly redacted the invoices produced in response to Ames's public-records request. Therefore, the court of appeals correctly determined that Ames was not entitled to statutory damages. *See State ex rel. Ames v. Big Walnut Local School Dist. Bd. of Edn.*, 2025-Ohio-2493, ¶ 12, 14 (no entitlement to statutory damages when the relator failed to prove a violation of R.C. 149.43(B)).

2. Explanation for Redactions

{¶ 21} Ames also argues that he should be awarded statutory damages because the board violated R.C. 149.43(B)(3) by failing to provide a contemporaneous explanation for redactions made to the invoice it produced in response to his public-records request. R.C. 149.43(B)(3) provides:

> If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing.

See also R.C. 149.43(B)(1) (a redaction to a record is deemed a denial of a request to inspect or copy the redacted information). In this case, Ames contends that the board failed to comply with R.C. 149.43(B)(3) when it provided a redacted copy of the requested record on December 19, 2024, without an accompanying explanation for the redactions. The board's explanation came later that day, after Ames complained that the redactions were too extensive. Ames argues that R.C. 149.43(B)(3) requires a public office to explain redactions at the same time it provides a redacted record.

{¶ 22} We reject Ames's argument. Even if we interpreted R.C. 149.43(B)(3) to require a public office to provide the explanation for redactions at the same time as the redacted record, Ames would not be entitled to any statutory damages. R.C. 149.43(C)(2) fixes the amount of statutory damages at $100 "for each business day during which the public office . . . failed to comply with an obligation [under R.C. 149.43(B)], *beginning with the day on which the requester files a mandamus action to recover statutory damages*," up to a maximum of $1,000. (Emphasis added.) In this case, the board provided its written explanation for

redactions *before* Ames filed his mandamus action. Thus, under R.C. 149.43(C)(2), there are no statutory damages to calculate.

B. Court Costs

{¶ 23} Ames argues that the court of appeals erred in denying him recovery of court costs. Under R.C. 149.43(C)(3), a court shall award costs if (1) it grants relief ordering the public office or person responsible for the public record to comply with R.C. 149.43(B) or (2) it determines that the public office or person responsible for the public records "acted in bad faith" by "voluntarily [making] the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply" with R.C. 149.43(B). R.C. 149.43(C)(3)(a)(i) and (ii) and (b)(iii). Ames argues that the board and Baker Dublikar acted in bad faith by complying with his records request after he filed suit, entitling him to court costs under R.C. 149.43(C)(3)(a)(ii).

{¶ 24} We need not reach Ames's bad-faith argument. In his motions for judgment on the pleadings, Ames asked only for mandatory court costs under R.C. 149.43(C)(3)(a)(i). Having failed to raise bad faith as a basis for an award of court costs in the court of appeals, Ames has forfeited the argument here. *State ex rel. Martin v. McCormick*, 2026-Ohio-568, ¶ 11 ("Arguments raised for the first time on appeal will not be considered by an appellate court.").

III. CONCLUSION

{¶ 25} For the foregoing reasons, we affirm the judgment of the court of appeals.

Judgment affirmed.

KENNEDY, C.J., concurring in judgment only.

{¶ 26} In *State ex rel. Pietrangelo v. Avon Lake*, 2016-Ohio-2974, this court muddled the law when it held that a public-records custodian's duty under the

Public Records Act, R.C. 149.43, to produce information from an itemized attorney-fee billing statement is controlled by whether litigation between the requester and the public office is pending. The protections of the attorney-client privilege do not turn on whether such a lawsuit exists, so neither should a public-records custodian's duty to produce information allegedly protected by the privilege.

{¶ 27} Therefore, this court should overturn *Pietrangelo* to realign this court's public-records precedent with established principles of the doctrine of attorney-client privilege. And the court should take this opportunity to clarify that only the narrative-services portion of an attorney-fee billing statement is privileged and therefore only that portion may be redacted under R.C. 149.43(B)(1).[5] Doing so would not affect the judgment in this case.

{¶ 28} I agree with the court's holding that appellant, Brian M. Ames, is not entitled to statutory damages and court costs. So, I concur in the court's judgment affirming the court of appeals.

{¶ 29} Appellees, Northfield Center Township Board of Trustees ("Northfield") and the Baker Dublikar law firm ("Baker"), violated the Public Records Act by redacting nonexempt information in the first itemized attorney-fee billing statement that they turned over to Ames. However, they did so in reasonable reliance on this court's holding in *Pietrangelo*, 2016-Ohio-2974. The majority also correctly finds that Northfield and Baker provided Ames with a legal reason for the redactions prior to Ames's filing his mandamus action.

{¶ 30} Because the evidence shows that Northfield and Baker reasonably relied on this court's authority in *Pietrangelo* when they made their redactions and that they provided Ames with their legal reasoning in writing prior to Ames's filing of the mandamus action, the court is correct in affirming the court of appeals'

5. This opinion applies the version of R.C. 149.43 that was enacted in 2024 Sub.S.B. No. 29 (effective Oct. 24, 2024).

judgment denying Ames's request for statutory damages and court costs. Because the court forgoes the opportunity to overturn *Pietrangelo* and restore the court's prior correct understanding of the application of the attorney-client privilege in the context of a public-records request, I concur in judgment only.

I. Background

{¶ 31} On December 16, 2024, Ames submitted a public-records request to Northfield for copies of "the invoices for legal services provided in [the case in the pending litigation between Ames and Northfield]." On December 19, Northfield responded by providing a three-page invoice that had six labeled columns on the first two pages: "Date," "By," "Services," "Hours," "Rates," and "Amount." On the first page, the "Date," "By," "Services," and "Hours" columns were redacted. On the second page, those same columns and the "Rates" column were redacted. The third page had no redacted material, and it listed the total hours, total services, total invoice amount, previous balance, and the current balance due. A half hour after receiving the redacted invoice from Northfield, Ames responded that the redactions were too extensive and that only the descriptions in the "Services" column were properly redacted. A few hours after that, Baker sent Ames's attorney an email explaining that the redactions complied with the law as set forth in *Pietrangelo*. Northfield forwarded the same email directly to Ames a half hour later, and Ames filed his mandamus action soon afterward.

{¶ 32} In hopes of resolving the dispute, Baker provided Ames with a second copy of the invoice on January 17, 2025. In that copy, only the "Services" column was redacted on the first two pages. In other words, the second invoice revealed the dates, the initials of the people who had provided the services, the hours worked by each provider, the rate charged by each provider, and the amount charged for each service.

{¶ 33} Despite acknowledging that the second invoice rendered his mandamus action moot, Ames moved for judgment on the pleadings against both

Northfield and Baker on the question of statutory damages and court costs. In response, Northfield and Baker opposed Ames's motions and moved for judgment on the pleadings against Ames.

{¶ 34} The Ninth District Court of Appeals denied Ames's motions and granted Northfield's and Baker's motions. 2025-Ohio-5115, ¶ 1 (9th Dist.). Because Ames had already received the requested records, the court of appeals denied the writ as moot. *Id.* at ¶ 5. Relying on *Pietrangelo*, the court held that the redactions complied with R.C. 149.43(B)(1), 2025-Ohio-5115 at ¶ 13-14 (9th Dist.), and it denied an award of statutory damages and court costs. *Id.* at ¶ 19, 22.

II. Analysis

A. Attorney-Client Privilege and Pietrangelo

{¶ 35} The ultimate arbiter of public policy relevant to Ohio's public-records law is the General Assembly. *Kish v. Akron*, 2006-Ohio-1244, ¶ 44. And the legislature has decided that "*all of the information within the public record that is not exempt*" must be disclosed. (Emphasis added.) R.C. 149.43(B)(1). "The General Assembly has not authorized any public entity to make a value judgment on the information contained in the public record sought and withhold nonexempt information . . . ." *Pietrangelo*, 2016-Ohio-2974, at ¶ 34 (Kennedy, J., concurring in part and dissenting in part).

{¶ 36} "Exceptions to disclosure under the Public Records Act, R.C. 149.43, are strictly construed against the public-records custodian, and the custodian has the burden to establish the applicability of an exception." *State ex. rel. Cincinnati Enquirer v. Jones-Kelley*, 2008-Ohio-1770, paragraph two of the syllabus. "A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception." *Id.*

{¶ 37} "If a public record contains information that is exempt . . . , the public office . . . shall make available all of the information within the public record that is not exempt." R.C. 149.43(B)(1). For purposes of the Public Records Act, the

definition of "public record" excludes "[r]ecords the release of which is prohibited by state or federal law." R.C. 149.43(A)(1)(v).

{¶ 38} This court has recognized that state law prohibits the release of records protected by the attorney-client privilege, *State ex rel. Besser v. Ohio State Univ.*, 2000-Ohio-475, ¶ 29, and that *narrative portions* of an itemized attorney-fee billing statement that describe the attorney's legal services to the client fall under that privilege. *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 2011-Ohio-6009, ¶ 28.

{¶ 39} In reaching its decision in *Pietrangelo* regarding what information in an itemized attorney-fee billing statement may be redacted under the Public Records Act, the majority distinguished *Dawson* from *State ex rel. Anderson v. Vermilion*, 2012-Ohio-5320, based on whether litigation was pending between the requester and the public office. *Pietrangelo*, 2016-Ohio-2974, at ¶ 16. Relying on that distinction, the majority in *Pietrangelo* concluded that the respondents' redaction of "all information except the header and billing designation, the date 'legal services [were] rendered as of,' the numerical client and matter designation, the amount of total fees, the disbursements and expenses, and the total invoice amount," *id.* at ¶ 24 (Kennedy, J., concurring in part and dissenting in part), was proper, *id.* at ¶ 17.

{¶ 40} But "[w]hether a public-records requestor and a government entity are engaged in litigation is irrelevant to the question whether information in an itemized attorney-fee billing statement is privileged and exempt from disclosure." *Id*. at ¶ 30 (Kennedy, J., concurring in part and dissenting in part). This court's precedent "mandates that the proper focus is on the information sought and whether that information is privileged." *Id*.

{¶ 41} The proper distinction between *Dawson* and *Anderson* is that in *Dawson*, the school district had created a summary of the nonexempt information and provided that summary to Dawson in lieu of providing her with copies of the

itemized attorney-fee billing statements themselves. *Dawson*, 2011-Ohio-6009, at ¶ 2. After an independent review of the itemized attorney-fee billing statements and the summary, this court held that "[n]o further access to the detailed narratives . . . was warranted." *Id.* at ¶ 6-7, 29.

{¶ 42} In *Anderson*, the city of Vermilion had simply denied Anderson's public-records request for the itemized attorney-fee billing statement on the basis that the *record* was exempt from disclosure. *Anderson*, 2012-Ohio-5320, at ¶ 4. As this court stated in *Anderson*, "the narrative portions of itemized attorney-billing statements containing descriptions of legal services performed by counsel for a client are protected by the attorney-client privilege." *Id*. at ¶ 13, citing *Dawson* at ¶ 28-29 and *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 2012-Ohio-4246, ¶ 36.

{¶ 43} This court has instructed lower courts to conduct an in-camera review to determine what information in an itemized attorney-fee billing statement is protected by the attorney-client privilege. *Anderson* at ¶ 16. And """*[i]f the court finds that these records contain excepted information, [that] information must be redacted and any remaining information must be released.*""" (Emphasis added in *Anderson*.) *Id.*, quoting *State ex rel. Master v. Cleveland*, 1996-Ohio-228, ¶ 30, quoting *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79 (1988), paragraph four of the syllabus. There is no "exception to the explicit duty in R.C. 149.43(B)(1) for public offices to make available all information that is not exempt after redacting the information that is exempt." *Anderson* at ¶ 19.

{¶ 44} This court's application of its analysis in *Dawson* to the public records at issue in *Pietrangelo* was contrary to law. This court failed to appreciate the difference in the types of attorney-fee information sought by the relators in *Dawson* and the relators in *Pietrangelo*. The information at issue in *Dawson* was the "detailed descriptions of work performed by the [school] district's attorneys, statements concerning their communications to each other and insurance counsel,

and the issues they researched," *Dawson*, 2011-Ohio-6009, at ¶ 29, which is not comparable to the "dates, hours, and rates" at issue in *Pietrangelo*, 2016-Ohio-2974, at ¶ 17. The present case illustrates why.

{¶ 45} Recall that in the first invoice provided to Ames, the "Date," "By," "Services," and "Hours" columns were redacted on the first page and those same columns and the "Rates" column were redacted on the second page; in the second invoice provided to Ames, only the "Services" column was redacted. Comparing the two invoices side by side, it is difficult to see how the date the services were provided, the identification of the service provider, the hours worked by each provider, and the rates charged by each provider, the same kind of information that was at issue in *Pietrangelo*, were "inextricably intertwined with the narratives of services that are privileged materials," *Pietrangelo* at ¶ 17. Without the narrative descriptions of the legal services provided, the invoice conveys only the amount of time spent on the case each day, the initials of the person who spent the time, and the hourly rate charged.

{¶ 46} Even if the requester went to the trouble to figure out to whom the initials belong, all the requester would learn is that a certain person on a certain day and for a certain duration and a certain fee did *something*. It strains credulity to say that a litigant would find such information "useful in his litigation strategy," *id.* at ¶ 16.

{¶ 47} Northfield redacted what can only be described as innocuous information that is neither privileged material nor inextricably intertwined with privileged material, and the fact that there is litigation pending between Ames and Northfield does not change the information's nature. Government records do not gain the protection of the attorney-client privilege just because litigation is pending involving the public-records requester and the public office from which the records are sought. *Pietrangelo* was wrong to say otherwise.

{¶ 48} Moreover, *Pietrangelo*'s policy rationale—preventing a public-records requester from gaining an advantage over a litigation adversary—conflicts with the Public Records Act's general policy against conditioning production of requested records on the requester's intended use of the records, *see* R.C. 149.43(B)(4); *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, 2020-Ohio-5371, ¶ 33, fn. 4 ("the requester is not required to provide a reason for the request").

{¶ 49} For all these reasons, this court should overturn its misguided decision in *Pietrangelo* and bring its public-records precedent back into accordance with established principles of the doctrine of attorney-client privilege.

{¶ 50} Because appellees failed to "make available all of the information within the public record that is not exempt" in the first invoice, I can only conclude that they violated R.C. 149.43(B)(1). However, that does not mean that Ames is automatically entitled to statutory damages and court costs.

B. Statutory Damages and Court Costs

{¶ 51} A relator is entitled to recover statutory damages—fixed at $100 for each business day, upon the filing of a mandamus action, up to a maximum of $1,000—if the public-records custodian fails to comply with an obligation in R.C. 149.43(B). R.C. 149.43(C)(2). Here, Ames received the excessively redacted first invoice on December 19, 2024, the same day that he filed his mandamus action, and he received the properly redacted second invoice on January 17, 2025. Obviously, more than ten business days had passed between those two dates, so he would appear to be entitled to statutory damages of $1,000.

{¶ 52} However, even if a relator is entitled to statutory damages, the court may reduce or decline to award statutory damages if it determines that two conditions are met. *Id.* "To reduce or not award statutory damages, the court must decide that 'a well-informed' records custodian would reasonably believe that the conduct of the records custodian (1) 'did not constitute a failure to comply with an obligation in accordance with [R.C. 149.43(B)]' . . . and (2) 'would serve the public

policy that underlies the authority that is asserted as permitting that conduct.'" *State ex rel. Ellis v. Dept. of Rehab. & Corr.*, 2026-Ohio-3770, ¶ 77 (Kennedy, C.J., concurring in part and dissenting in part), quoting R.C. 149.43(C)(2)(a) and (b).

{¶ 53} The email from Baker that Northfield forwarded to Ames shows a reasonable reliance on *Pietrangelo*. At the time, Ames and Northfield were adversaries in litigation, and the email sought to explain to Ames why the redactions were appropriate, specifically citing *Pietrangelo*'s statement exempting dates, hours, and rates from disclosure under such circumstances. There is no evidence in the record to suggest that Northfield and Baker did not reasonably believe that they were complying with R.C. 149.43(B). Further, the policy underlying *Pietrangelo*'s holding was to prevent the disclosure of information that could be used against a litigation opponent. *Pietrangelo*, 2016-Ohio-2974, at ¶ 16. The email and first invoice provided to Ames leave no doubt that Northfield and Baker reasonably believed that their conduct would serve that policy. Moreover, Northfield and Baker provided Ames with their explanation of legal authority for their redactions prior to Ames's filing the mandamus action. Therefore, Ames is not entitled to statutory damages or court costs.

III. Conclusion

{¶ 54} This court should overturn *Pietrangelo* and thereby realign its public-records precedent with established principles of the doctrine of attorney-client privilege. Whether a public-records requester and public office are engaged in litigation is irrelevant to the question whether information contained in an itemized attorney-fee billing statement is privileged information that is exempt from disclosure.

{¶ 55} Because I concur in the court's judgment but believe that the majority errs in declining to overturn *Pietrangelo*, I concur in judgment only.

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Baker Dublikar and Melvin L. Lute Jr., for appellee Baker Dublikar.
