

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Robert Watson,	:	
	:	
Relator,	:	No. 10AP-949
	:	
v.	:	(REGULAR CALENDAR)
	:	
[Gary C. Mohr], Director of the Ohio	:	
Department of Rehabilitation and	:	
Correction et al.,	:	
	:	
Respondents.	:	

D E C I S I O N

Rendered on October 20, 2011

Robert Watson, pro se.

Michael DeWine, Attorney General, and Jason Fuller, for respondents.

IN MANDAMUS
ON OBJECTIONS TO MAGISTRATE'S DECISION

TYACK, J.

{¶1} Robert Watson has filed this action in mandamus seeking a writ to compel various persons with the Ohio Department of Rehabilitation and Correction ("ODRC") to provide him copies of public and non-public records related to parole hearings and his own hearings in particular.

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings. Evidentiary material was submitted and briefs were filed. The magistrate then issued a magistrate's decision, followed by a second magistrate's decision "nunc pro tunc, which is appended hereto." The decision recommended that we not grant a writ or award damages.

{¶3} Watson filed objections to the magistrate's decision. Counsel for ODRC filed a memorandum in response. The case is now before the court for a full, independent review.

{¶4} Watson is an inmate recently housed at Mansfield Correctional Institution. After he was denied parole, he sought public and non-public records from ODRC, allegedly so he could ask for reconsideration of the parole decision and/or so he could file an application for clemency with the governor of Ohio. The evidentiary material sought by Watson is summarized in the magistrate's decision.

{¶5} Watson disagrees with two sets of factual findings in the magistrate's decision. First, he asserts that he submitted payment for the records he seeks. He supports this assertion with an affidavit claiming payment and a copy of a "Response to Kite" which includes reference to a cash slip received by S. Gall with ODRC. The response does not say how much was paid or for what purpose. Watson's affidavit states that the payment was for the cost of some of the records he seeks. We will consider below what impact the apparent payment has on the merits of this case.

{¶6} The second factual objection regards whether or not Watson complained about the loss of a magazine. This issue has no bearing on the merits of this case. The second objection, titled "Error No. 2," is overruled.

{¶7} The third objection, titled "Error No. 3" states:

The magistrate erred by not separately addressing both of relator's claims.

{¶8} We will independently assess the merits of both of Watson's claims, so the form of the magistrate's decision is irrelevant to the key issues.

{¶9} The third objection is overruled.

{¶10} The fourth objection, titled "Error No. 4" states:

The magistrate erred by not allowing relator to obtain discovery.

{¶11} A panel of this court has already addressed the merits of this objection and resolved it against Watson. We are bound to follow that ruling.

{¶12} The fourth objection is overruled.

{¶13} The fifth objection, titled "Error No. 5" reads:

The magistrate erred by finding that only a licensed attorney at law may obtain non-public records.

(Emphasis sic.)

{¶14} Ohio Adm.Code 5120:1-1-36 is set forth in the conclusions of law section of the magistrate's decision. The administrative code clearly limits who may receive non-public records. Watson cannot demand and receive them directly. The magistrate's decision correctly addresses this issue.

{¶15} The fifth objection is overruled.

{¶16} We must now address the effect of the payment of the \$.95 sum for the cost of public records upon the outcome of this action in mandamus. We have already determined that Watson cannot receive the non-public records directly, so the issue is narrowed to his entitlement to public records following payment.

{¶17} Watson is apparently entitled to the conduct reports, rules infraction-based decisions, determinations, orders, minutes of the Ohio Adult Parole Authority and a copy or copies of master file cover information to the extent that the documents directly relate to him. We cannot know if the documents, which apparently were assembled for him to review, have been provided while this mandamus action has been pending.

{¶18} Based upon the record before us and the reality of the crowding of the penal system in Ohio, we cannot say that respondents failed to act promptly in response to Watson's requests for public records. We, therefore, are unwilling to assess statutory damages in this case. However, we grant a writ of mandamus to compel ODRC to provide the documents directly related to Watson as listed above, to the extent they exist and have not already been provided, if or when Watson has paid the \$.95 for the copies.

{¶19} We, therefore, sustain the first objection. We adopt the remaining findings of fact and conclusions of law not dependent on the payment of \$.95.

{¶20} We grant a writ of mandamus to the extent indicated above.

The first objection is sustained; writ granted.

FRENCH and CONNOR, JJ., concur.

APPENDIX
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Robert Watson,	:	
	:	
Relator,	:	No. 10AP-949
v.	:	(REGULAR CALENDAR)
[Gary C. Mohr], Director of the Ohio Department of Rehabilitation and Correction et al.,	:	
	:	
Respondents.	:	

MAGISTRATE'S DECISION
NUNC PRO TUNC

Rendered on July 26, 2011

Robert Watson, pro se.

Michael DeWine, Attorney General, and Jason Fuller, for respondents.

IN MANDAMUS

{¶21} Relator, Robert Watson, has filed this original action requesting that this court issue a writ of mandamus ordering respondents to provide him with certain public and non-public records which he requested and further asks this court to award him statutory damages pursuant to R.C. 149.43(C). In his complaint for a writ of mandamus, relator names the following respondents: Ernie Moore, Director of the Ohio Department of

Rehabilitation and Correction; Reginald E. Wheeler ("Wheeler"), Chief of the Bureau of Records Management; Cynthia Mausser ("Mausser"), Chairperson of the Ohio Adult Parole Authority ("APA"); Shelly S. Gall ("Gall"), Assistant Institutional Inspector of the Mansfield Correctional Institution; Barbara Bell ("Bell"), Case Manager of the Mansfield Correctional Institution; Sharon Berry ("Berry"), Institutional Inspector of the Mansfield Correctional Institution; and Ted Morrison, Mansfield Correctional Institution Liaison of the Ohio APA.

Findings of Fact:

{¶22} 1. Relator is an inmate currently incarcerated at Mansfield Correctional Institution.

{¶23} 2. By letter dated May 17, 2010, relator sent a public records request to respondent Mausser, Chairperson of the Ohio APA. That letter provides as follows:

I previously sent you a letter by certified mail on March 29, 2010 seeking Public Records. I did not hear anything about my request. Therefore, I am re-submitting and revising my request for public and non-public records as follows pursuant to R.C. 149.43; OAC 5120:1-1-36; OAC 5120-9-49 and DRC Policy 07-ORD-02.

OAC 5120:1-1-36: Please send me the following documents regarding the various parole board proceedings held between the dates of April 6, 2000 and February 10, 2010 for each of the below-mentioned documents requested under each law or policy, including any other record not specifically requested.

- (D)(1) Parole Board decision sheets;
- (D)(2) Parole Board risk assessments;
- (D)(3) Institutional Summary Reports;
- (D)(4) Master file cover information;
- (D)(5) Warrants and detainers;
- (D)(8) Parole candidate information sheets.

(Please note: pursuant to 5120-1-1-36(E) I am not requesting records of other inmates, so I am allowed to receive the above records.)

OAC 5120-9-49:

This statute says the following are deemed public records so I need records in your possession records pertaining to "Charges and decisions in inmate disciplinary cases" (any and all regarding my file). See, 5120-9-49(A)(3).

I have need for access of all of these documents requested. See, 5120-9-49(F).

DRC Policy 07-ORD-02:

Appendix A in DRC 07-ORD-02 considers the following documents "public" under **R.C. §149.43** and I need "Determinations, orders and minutes of the APA, including the Parole Board, resulting from any hearing" of the time-frame specified above. See, **Appendix A, (page 7 of 7)**. Finally, I need "Master File Cover information" from my case under DRC Policy 07-ORD-03. See, **Appendix A, page 7**.

Please send me a price quote and bill at your earliest convenience to prevent any possible future litigation of the above records sought.

{¶24} 3. Relator has not included a copy of the March 29, 2010 public records request referenced in his May 17, 2010 letter. As such, relator has not established this fact.

{¶25} 4. Relator acknowledges that he received a response to this request from respondent Wheeler, Chief of the Bureau of Records Management of the Ohio Department of Rehabilitation and Correction. That letter, dated May 28, 2010, provides as follows:

Your request for public and non-public records was received in my office for a response. What you are requesting is in

your file at the institution. I suggest speaking to your case manager to assist you in retrieving this information.

If you require further assistance, please feel free to contact my office at the above address.

{¶26} 5. Wheeler's response was prompt under R.C. 149.43.

{¶27} 6. In response to Wheeler's May 28, 2010 response, relator submitted an informal complaint resolution form to respondent Bell, Case Manager of the Mansfield Correctional Institution, on June 10, 2010. In that complaint, relator alleged the following:

As you are aware, I was recently denied a parole. Shortly thereafter, I attempted to obtain public and non-public records of my Institutional file so that I may file a Request for Reconsideration and/or Clemency to the Governor's Office. Shortly after my parole was denied, the parole board issued a memo saying they are no longer following the parole guideline handbook.

In attempting to comply with Ohio Public Records Law, I sent a letter (certified mail) to the Bureau of Records Management and an extra copy to Ms. Cynthia Mausser, Chairperson of the OAPA. I received her reply this week and she told me to speak to you to obtain and fulfill my request because " *** [e]verything is in your file at the institution." See, Exhibit A. (Letter dated 5/28/2010).

Enclosed are two pages marked: Exhibit B. I am now submitting this letter for your prompt reply (which is dated 5/17/2010). Please send me a price quote and a bill at your earliest convenience. I need everything which is listed in the letter marked "Exhibit B." Please refer to DRC Policy 07-ORD-02 which specifies that the ODRC is liable for statutory damages if my request for public records is denied, not looked at, or not immediately accomplished. See also, R.C. 149.43, et.seq. Thank you.

{¶28} 7. On June 22, 2010, Bell responded as follows:

Rec'd 6-17-10. Here is all I can give you. You should already have Parole Board decision sheets. I don't see the complaint, only a request.

{¶29} 8. The magistrate finds that Bell's June 22, 2010 response to relator's complaint received on June 17, 2010 was prompt under R.C. 149.43.

{¶30} 9. Apparently respondent Bell inadvertently provided relator with records from a different inmate. As such, relator submitted a grievance dated June 28, 2010.

{¶31} 10. Respondent Gall, Assistant Institutional Inspector of the Mansfield Correctional Institution, responded to relator's grievance as follows:

Your grievance, filed on 06/30/2010, has been reviewed and disposed of as follows:

In this grievance you allege Mrs. Bell, Case Manager would not assist you in retrieving copies of what you allege is public information. You allege Mrs. Bell only sent you another offenders record. To investigate this grievance I reviewed the policies you cited, talked to Mr. Morrison, APA liason [sic] and Mrs. Bell, Case Manager. Mrs. Bell mistakenly gave you the RAP on another offender. She meant to send yours. Mrs. Bell stated she also sent the warrant/detainer page you requested. I have copies of your master file cover page, parole board decisions, conduct reports/RIB decisions, and your RAP. Send me a Personal A/C Withdrawal slip for \$0.95 and I will send the copies to you. There were no parole board risk assessments or parole candidate information sheets in the states master/unit files on you. Offenders are not on the distribution list for copies of Institution Summaries. In the future I suggest you keep the copies distributed to you at the time of the event/decision.

This grievance is granted. Copies will be distributed upon receipt of the withdrawal slip.

{¶32} 11. According to his complaint, relator has not been provided with any of the non-public records which he requested. The hearing officer of the Adult Parole Board

responded to relator's request in a letter dated July 21, 2010. In that letter, relator was informed of the following:

The Parole Board received your letter dated May 17, 2010. It has been forwarded to my attention for review and response.

I have attached a copy of your last Parole Board decision sheet. The other records you requested are not considered public records and will not be released to you.

I trust that you will find this responsive to your request.

{¶33} On August 5, 2010, relator filed an appeal to the Chief Inspector indicating as follows:

The ManCI Inspector said to send her 95 [cents] and she will send me part of my request. I am currently working-together [sic] with her to obtain the public records sought, but it appears she is withholding much of what I requested. Could you investigate this matter and see that I obtain all of the public records sought as set-forth [sic] in the attached letter (Exhibit B)?

{¶34} While the record contains a decision from the Chief Inspector, that response deals with an apparent complaint relator made concerning the loss of a magazine.

{¶35} According to his complaint, relator met with respondent Berry, Institutional Inspector of the Mansfield Correctional Institution, and respondent Gall on August 10, 2010 and was informed of the following:

- a. No Parole Board risk assessments for 2004 and 2010;
- b. No readable Parole Decision Sheet of 4/6/00;
- c. Institutional Summary Reports;
- d. Did not know what a Parole Candidate Information Sheet is;
- e. Stated that Bell would provide the Warrants and Detainers sheet.

{¶36} 15. Thereafter, on October 4, 2010, relator filed the instant mandamus complaint in this court.

{¶37} 16. Relator has filed several motions, including motions for summary judgment, to compel discovery, and to set aside various magistrate's orders. These motions were all denied.

{¶38} 17. Relator filed his certified evidence on December 13, 2010.

{¶39} 18. Briefs have been submitted by both relator and respondents, and the matter is currently before the magistrate on the merits.

Conclusions of Law:

{¶40} As more fully explained below, it is this magistrate's decision that this court should deny his request for a writ of mandamus.

{¶41} R.C. 149.43 is Ohio's public records statute. Pursuant to that statute, certain records are identified as being public, while certain other records are identified as being non-public. Public records are subject to requests and must be promptly prepared and made available to the requester. Public offices are required to organize and maintain public records in a manner in which they can be made available for inspection or copying, and public offices shall have copies of its current records retention schedule readily available. Public offices are permitted to charge the requester for the cost of supplicating the records, as well as postage.

{¶42} Pursuant to R.C. 149.43(C)(1):

If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person * * * or by any other failure of a public office or

the person responsible for public records to comply with an obligation * * * the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply * * * that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action and, if applicable, that includes an order fixing statutory damages * * *.

{¶43} As indicated in the findings of fact, relator requested certain public and non-public records. A review of his request, as well as the responses that he received from respondent Gall, indicates that the public records which he has requested have been prepared and are available to relator as soon as he submits 95 cents to pay for the cost of the copies. Relator requested: (1) Charges and decisions in inmate disciplinary cases. The response indicates that respondent Gall has prepared the conduct reports and the rules infraction board decisions. This appears to comply with his first public record document. (2) Determinations, orders, minutes of APA, including the parole board, resulting from any hearing. According to respondent Gall's response, she has copies of the parole board decisions ready to make available to relator. (3) Relator has requested a copy of the master file cover information, which also appears to be waiting for relator to submit 95 cents.

{¶44} The magistrate finds that the respondents responsible for responding to relator's request for certain public records had those records ready for relator and that, as soon as relator submits 95 cents, those documents will be sent to him. Relator has not presented any evidence which would contradict respondent Gall's response. As such, the magistrate finds that respondents have made these records available.

{¶45} Relator also seeks certain non-public records under Ohio Adm.Code 5120:1-1-36, which provides, in pertinent part, as follows:

(D) * * * [T]he *following non-public parole board records shall be made available to representatives of approved media organizations, government officials, victims of any offense of commitment or a subsequent parole violation, or a licensed attorney at law designated by the victim or the inmate under the conditions and according to the procedures set forth in this rule:*

- (1) Parole board decision sheets
- (2) Parole board risk assessments
- (3) Institutional summary reports
- (4) Master file cover information
- (5) Warrants and detainers
- (6) Special conditions of parole
- (7) Parole certificates
- (8) Parole candidate information sheets

(Emphasis added.)

{¶46} The rule clearly provides that relator, as an inmate, may designate a "*licensed attorney at law*" to make a request for these non-public records, and, provided that certain conditions are met, the documents may be made available. Relator did not designate a licensed attorney at law to make this request for non-public records, and, as such, respondents were under no legal duty to make those documents available.

{¶47} Relator sought statutory damages concerning his public records request; however, this magistrate found that those documents were promptly prepared for him and are awaiting the payment of 95 cents. As such, the magistrate finds that relator has not demonstrated that he is entitled to statutory damages for any alleged failure to promptly prepare those documents. Because respondents had no duty to make the non-public

records available, relator's argument that he is entitled to statutory damages concerning these documents is moot.

{¶48} Based on the foregoing, it is this magistrate's decision that respondents have replied to relator's public records request, and relator's request for a writ of mandamus in this regard should be denied. Further, because respondents have no duty to make the requested non-public records available to him, this request for a writ of mandamus should likewise be denied.

/s/Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).