

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State ex rel. Robert Watson,	:	
	:	
Relator,	:	No. 11AP-3
	:	
v.	:	(REGULAR CALENDAR)
	:	
Director of the Ohio Department of Rehabilitation and Correction	:	
Ernie Moore,	:	
	:	
Respondent.	:	

---

D E C I S I O N

Rendered on December 13, 2011

---

*Robert Watson, pro se.*

*Michael DeWine, Attorney General, and Jason Fuller, for respondent.*

---

IN MANDAMUS  
ON OBJECTIONS TO MAGISTRATE'S DECISION

TYACK, J.

{¶1} Robert Watson filed this action in mandamus seeking a writ to compel the Ohio Department of Rehabilitation and Correction ("ODRC") to provide him certain public records. He also seeks statutory damages and court costs.

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings. The parties pursued discovery, specifically interrogatories.

Watson sought more detailed answers through a motion to compel. The motion was denied.

{¶3} The parties provided documentary evidence to the magistrate. The magistrate then issued a magistrate's decision containing detailed findings of fact and conclusions of law, which is appended to this decision. The magistrate's decision includes a recommendation that we deny the request for a writ of mandamus because the records specifically sought by Watson have been provided within a reasonable time.

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

{¶5} Robert Watson was an inmate at Mansfield Correctional Institution ("MCI" or "Mansfield Correctional") when he filed this action in mandamus. He attached to his complaint a copy of his letter dated November 22, 2010 in which he requested copies of the contracts with GTL, who provides telephone services to ODRC, and documents related to the contracts. He also requested a copy of ODRC's contract with Westlaw and documents which pertain to the Westlaw service at Mansfield Correctional. He mailed his mandamus action to the court one month after sending the letter.

{¶6} Before the mandamus action was filed, counsel for ODRC sent a response, a copy of which is set forth in paragraph seven of the magistrate's decision.

{¶7} Based upon the letter from ODRC, the magistrate found that ODRC had adequately and promptly responded to Watson's public records request. We agree.

{¶8} ODRC has to honor trade secrets contained in bids from contractors and public contracts. Just because a person, including an inmate, wants to review the

documents does not mean the documents must be provided, especially if they contain trade secrets and/or confidential business data.

{¶9} Since ODRC responded to the request for the contracts and related documents in a timely fashion, indeed before the action in mandamus was filed, Watson is not entitled to statutory damages or court costs.

{¶10} The findings of fact and conclusions of law contained in the magistrate's decision are adopted. The request for a writ of mandamus is denied as is the request for statutory damages and court costs.

*Motions denied; objections overruled;  
writ of mandamus denied.*

KLATT and DORRIAN, JJ., concur.

---

**APPENDIX**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Robert Watson,	:	
	:	
Relator,	:	No. 11AP-3
v.	:	(REGULAR CALENDAR)
Director of the Ohio Department of Rehabilitation and Correction	:	
Ernie Moore,	:	
Respondent.	:	

---

MAGISTRATE'S DECISION

Rendered on August 16, 2011

---

*Robert Watson, pro se.*

*Michael DeWine, Attorney General, and Jason Fuller, for respondent.*

---

IN MANDAMUS

{¶11} Relator, Robert Watson, has filed this original action requesting that this court order respondent, Ernie Moore as Director of the Ohio Department of Rehabilitation and Correction, to provide him with certain public records he requested. Relator also asks this court to award him statutory damages and court costs.

Findings of Fact:

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

{¶13} 2. Respondent is the director at the Ohio Department of Rehabilitation and Correction ("ODRC").

{¶14} 3. According to his complaint, relator sent a letter, dated November 22, 2010, to respondent requesting:

Copies of any notes, correspondence (electronic or otherwise), memorandum, or any other record pertaining to and including:

1. Copy of prisoner phone contracts with the current inmate phone company provider (GTL). Including any letters or memos concerning phone rates and other phone charges and taxes. Include local and long-distance rates. Include any written correspondence between DRC and GTL regarding the justification of high telephone fees. Include a copy of most recent bids for phone contracts with DRC.

2. Copy of current WestLaw contract. Include any service agreements for maintenance of the WestLaw System installed at ManCI. Include invoices and receipts for payment of WestLaw Terminals installed at ManCI, including the hard-drives attached to each of the WestLaw computer terminals at ManCI.

Please send a price estimate or bill for these public records as soon as possible. Thank you.

{¶15} 4. A document marked as Exhibit 4 in relator's certified evidence indicates that respondent received relator's public record request on November 26, 2010. Relator does not dispute this.

{¶16} 5. Relator acknowledges that he mailed this mandamus action on the date his complaint was notarized: December 22, 2010.

{¶17} 6. In a letter dated December 21, 2010, respondent replied to relator's request.

{¶18} 7. Respondent's response to relator's public record request was handled by Stephen Young, ODRC legal counsel. Respondent provided the following response to relator:

The Director's Office received on 11/26/10, your public record request dated 11/22/10, and referred it to me for a response.

Copies that can be provided to you of the GTL contract (2 page contract plus DRC's Response for Proposal) are 186 pages at \$.05/page, equals \$9.30. GTL's proposal which is part of the contract is subject to inspection only given copyright laws.

The legal review for exemptions to the public record law regarding your request for the bids/proposals of SECURUS and EMBARQ is completed.

SECURUS' Proposal constitutes a trade secret. It is exempt from any disclosure under the exception in R.C. 149.43(A)(1)(v) (Public Record Law) based on the Ohio Uniform Trade Secret Act. Additionally, SECURUS Proposal is proprietary intellectual property and is subject to copyright, law enforcement, and patent protections under federal [5 U.S.C. section 552(b)(7)] and state law. SECURUS declined to give permission to reproduce the Proposal.

My review of EMBARQ's Proposal indicates that it is public under Ohio Public Records Act except for subcontractor material of Inmate Calling Solutions, LLC financial information (two pages, confidential) and ICSolutions "The Enforcer User Manual" (pages 1-137, confidential and proprietary). This exempt portion also constitutes a trade secret. The copying costs of EMBARQ's public Proposal of 475 pages at \$.05/page is \$23.75.

Your request for letters, memos, and written correspondence relating to rates, charges, taxes, and fees is vague and overbroad, therefore, it is not a proper record request.

Finally, you request a copy of the WestLaw contract. The copying cost for that contract of 103 pages at \$.05/page is \$5.15.

The copying cost for 764 pages is \$38.20. The certified mailing costs return receipt requested for 764 pages is a total amount of \$13.95. Please have the cashier issue a check for \$52.15 made payable to the Treasurer of the State of Ohio and send it to me at the above address before such copies will be made and mailed.

{¶19} 8. Relator's signature appears at the bottom of respondent's December 21, 2010 letter indicating that relator received respondent's response on December 23, 2010.

{¶20} 9. After relator received respondent's December 21, 2010 letter, and after relator mailed this mandamus action, relator continued to make additional requests for records.

{¶21} 10. In one letter in particular, dated December 23, 2010, relator acknowledged receipt of respondent's response to his November 22, 2010 request for documents and indicated that he was enclosing a check for \$5.25 to cover the cost of copying and mailing some of the documents. Relator offered to " 'work together' " with Mr. Young in an effort to procure certain documents to which relator believed he was entitled.

{¶22} 11. Additional letters have been sent and received by relator and Mr. Young in the interim.

{¶23} 12. As is evidenced by relator's Exhibits 4 and 5, respondent has responded to relator's November 22, 2010 public record's request.

{¶24} 13. Relator has filed several motions asking the magistrate to conduct in camera inspections of documents which he believes respondent is withholding in error. Those motions have been denied.

{¶25} 14. Respondent has also filed several motions asking this court to set aside the magistrate's orders. Those motions have also been denied.

{¶26} 15. The matter has been submitted to the magistrate.

Conclusions of Law:

{¶27} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶28} For the reasons that follow, it is this magistrate's decision that this court should deny relator's request for a writ of mandamus.

{¶29} Relator's complaint in this court involves his November 22, 2010 request and relator seeks the following:

Relator respectfully request that the Court:

(1) Issue a writ of mandamus compelling Moore to comply with R.C. § 149.43, and immediately provide the public records;

(2) In accordance with R.C. § 149.43(C)(1) and (C)(2)(a) & (b), award full statutory damages, court costs and attorney fees in Relator's favor; and,

(3) Any other relief as deemed fair and just.

{¶30} As is evidenced by relator's certified evidence, respondent has responded to relator's November 22, 2010 request. The relief which relator sought has been provided. "Mandamus will not compel the performance of an act that has already been performed." *State ex rel. Fontanella v. Kontos*, 117 Ohio St.3d 514, 2008-Ohio-1431, ¶6.

{¶31} Because relator's complaint only requested that respondent reply to his November 22, 2010 request, every request he submitted to respondent after that date is not part of what relator seeks to compel respondent to do in his complaint. Although relator could have amended his complaint, he did not. Therefore, his motion to compel this court to conduct in camera inspections were not related to his complaint and therefore were not relevant.

{¶32} As the above indicates, relator has received the relief which he sought to compel respondent to perform: respondent has responded to his November 22, 2010 request.

{¶33} With regard to relator's request for statutory damages, relator has the burden to demonstrate that respondent's response to his public records request was unreasonably delayed. *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384. Further, a review of R.C. 149.43(B)(1) reveals that the state of Ohio has not set a required time period for a public office to respond to a request for copies of public records. The only requirement is that the copy be made available in a reasonable period of time. *Id.* This magistrate is cognizant of the decision from this court in *State ex rel. Simonsen v. Ohio Dept. Rehab. & Corr.*, 10th Dist. No. 08AP-21, 2009-Ohio-442, indicating that prisoner requests for public records should be treated the same way that requests from the general public are made. However, in *Simonsen*, respondent

completely ignored Simonsen's request and did nothing for months. In the present case, respondent replied in less than 30 days. Considering that relator's request was made at the time of Thanksgiving 2010, and considering a review of his request indicates that he sought many documents, this magistrate concludes that relator has not demonstrated that respondent failed to provide those copies to him within a reasonable period of time and this court should deny his request for statutory damages.

{¶34} Based on the foregoing, it is this magistrate's decision that this court should deny relator's request for a writ of mandamus and deny his further request for an award of statutory damages.

*/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).