[Cite as *Gannett GP Media, Inc. v. Chillicothe Police Dept.*, 2018-Ohio-1552.]

GANNETT GP MEDIA, INC., D/B/A CHILLICOTHE GAZETTE Requester v. CHILLICOTHE, OHIO POLICE DEPARTMENT Respondent	Case No. 2017-00886-PQ Special Master Jeffery W. Clark REPORT AND RECOMMENDATION

{¶1} Ohio's Public Records Act, R.C. 149.43, provides a remedy for production of records under R.C. 2743.75 if the court of claims determines that a public office has denied access to public records in violation of R.C. 149.43(B). The policy underlying the Act is that "open government serves the public interest and our democratic system." *State ex rel. Dann v. Taft,* 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472, ¶ 20. "[O]ne of the salutary purposes of the Public Records Law is to ensure accountability of government to those being governed." *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158, 684 N.E.2d 1239 (1997). Therefore, the Act "is construed liberally in favor of broad access, and any doubt is resolved in favor of disclosure of public records." *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 376, 662 N.E.2d 334 (1996). R.C. 149.43(B)(1) requires a public office to make copies of public records available to any person upon request, within a reasonable period of time.

{¶2} On September 21, 2017, Jona Ison, a reporter for requester Gannett GP Media, d/b/a Chillicothe Gazette (Gazette) made a public records request to respondent Chillicothe, Ohio Police Department (Chillicothe PD) for a "[c]opy of the initial incident reports relating to the [Midwest Motoplex] investigation." (Complaint at 31.) On September 29, 2017, Law Director Sherri Rutherford responded: "The records cannot be released as they relate to a pending lawsuit and an open criminal investigation." (*Id*.

at 30.) Later that day counsel for the Gazette asked Ms. Rutherford to reconsider (*Id*. at 29), and on October 5, 2017, she provided redacted copies of pages one through four of "the initial incident report you requested," explaining that pages five through twelve were exempt pursuant to R.C. 149.43(A)(1)(h) and R.C. 149.43(A)(2)(c). (*Id*. at 7, 11-14.) Additional inquiries from the Gazette did not elicit any further response. (*Id*. at 27-28.)

{¶3} On October 31, 2017, the Gazette filed a complaint under R.C. 2743.75 alleging denial of timely access to public records in violation of R.C. 149.43(B), specifically access "to unredacted incident reports." (Complaint at 1.) The Gazette alleged a separate violation based on Chillicothe PD's refusal "to provide relevant legal authority for its actions." *Id*. The case proceeded to mediation, and on December 11, 2017, the court was notified that the case was not resolved. On December 20, 2017, Chillicothe PD filed its response and motion to dismiss (Response). In response to a December 27, 2017 court order, the Gazette filed a reply on January 8, 2018 (Reply). On January 17, 2018, Chillicothe PD filed an unredacted copy of the requested records, under seal. The records at issue are contained in a twelve-page (as printed) electronic file titled "Master Incident Report" (Report).

{¶4} R.C. 2743.75(F)(1) states that determination of public records claims shall be based on "the ordinary application of statutory law and case law." Case law regarding the alternative public records remedy under R.C. 149.43(C)(1)(b) provides that a relator must establish by "clear and convincing evidence" that she is entitled to relief. *State ex rel. Miller v. Ohio State Hwy. Patrol,* 136 Ohio St.3d 350, 2013-Ohio-3720, ¶ 14. Therefore, the merits of this claim shall be determined under the standard of clear and convincing evidence, i.e., "that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph

three of the syllabus. *Accord Hurt v. Liberty Twp*., 5th Dist. Delaware No. 17CAI050031, 2017-Ohio-7820, ¶ 27-30.

Motion to Dismiss

{¶5} Chillicothe PD moves to dismiss the complaint on the grounds that, 1) it has released all public records responsive to the request and, 2) the withheld records are subject to the specific investigatory work product exception found in R.C. 149.43(A)(2). In construing a motion to dismiss pursuant to Civ.R. 12(B)(6), the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co*., 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. Univ. Community Tenants Union, Inc*., 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975). The unsupported conclusions of a complaint are, however, not admitted and are insufficient to withstand a motion to dismiss. *Mitchell* at 193.

Suggestion of Mootness

{¶6} In an action to enforce R.C. 149.43(B), a public office may produce the requested records prior to the court's decision, and thereby render the claim for production moot. *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, 950 N.E.2d 952, ¶ 18-22. A court considering a claim of mootness for a public records request must first determine what records were requested, and then whether any responsive records were provided. In correspondence attached to the complaint, the Gazette documents its receipt of redacted copies of pages one through four of the withheld records. (Complaint at 11-14.) I therefore recommend that the claim for production of the initial incident reports be DISMISSED AS MOOT as to the unredacted portions of the Report disclosed prior to the filing of the complaint. The court should proceed to determine whether the remaining records were withheld in violation of R.C. 149.43(B).

{¶7} While not apparent in the complaint, and therefore not subject to the motion to dismiss, the record shows that Chillicothe PD later provided the Gazette with a redacted copy of page five of the withheld records. (Response at 23.) I recommend that the claim for production also be DENIED AS MOOT as to the unredacted portion of page five.

Application of Claimed Exceptions

{¶8} R.C. 149.43(A)(1) sets forth specific exceptions from the definition of "public record," as well as a catch-all exception for "[r]ecords the release of which is prohibited by state or federal law." R.C. 149.43(A)(1)(v). The public office bears the burden of proof to establish the applicability of any exception:

> a. 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. * * * A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception.

State ex rel. Cincinnati Enquirer v. Jones-Kelley, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, ¶ 10. Chillicothe PD asserts that the redacted items within pages one through four of the Report are subject to the Supreme Court Rules of Superintendence for the Courts, Rule 45(D), and that the withheld portions of pages five through twelve are subject to the confidential law enforcement investigatory records (CLEIRs) exception in R.C. 149.43(A)(2).

Rules of Superintendence for the Courts

{¶9} The Rules of Superintendence for the Courts of Ohio (Rules or Sup.R.), promulgated by the Supreme Court pursuant to Ohio Constitution, Article IV, Section 5(A)(1), are applicable to designated Ohio courts. Sup.R. 1(A). Sup.R. 44 through 47 "deal specifically with the procedures regulating public access to court records and are the sole vehicle for obtaining such records * * *." *State ex rel. Richfield v. Laria*, 138 Ohio St.3d 168, 2014-Ohio-243, 4 N.E.3d 1040, ¶ 8. Sup.R. 45, titled *Court Records – Public Access*, governs public requests made to courts for court records.

{¶10} Chillicothe PD cites Sup.R. 45(D) as the basis for redaction of asterisked personal identifiers in pages one through four of the Report. (Complaint at 11-14, see footnotes.) Under Sup.R. 45(D)(1), "a party to a judicial action or proceeding" is required to omit personal identifiers "when submitting a case document to a court or filing a case document with a clerk of court." Sup.R. 45(D) has no application to entities that are not parties to an action, or to original records kept by a party. The Gazette did not request court records, or records "as submitted" to a court – it requested records directly from Chillicothe PD.

{¶11} A public office may not utilize a public records exception that is limited to other agencies. *State ex rel. Beacon Journal Pubg. Co. v. Akron,* 104 Ohio St.3d 399, 2004-Ohio-6557, 819 N.E.2d 1087, ¶ 36-45 (police could not assert exception limited to similar reports of children services agencies.); *State ex rel. Thomas v. Ohio State Univ., 71 Ohio St.3d 245, 247-248, 643 N.E.2d 126 (1994)* (state university could not assert federal Freedom of Information Act (FOIA), which does not apply to state agencies); *State ex rel. James v. Ohio State Univ.,* 70 Ohio St.3d 168, 170, 637 N.E.2d 911 (1994) (university promotion/tenure evaluators could not assert they were "confidential informants" under exception applying only to law enforcement agencies). I find that Chillicothe PD has not shown that the redacted personal identifiers fall squarely within the claimed exception in Sup.R. 45(D), because that exception is limited to records submitted to a court.

{¶12} However, social security numbers (SSNs) are subject to other records exceptions under state law. R.C. 149.43(A)(1)(dd) incorporates by reference R.C. 149.45(A)(1)(a), "an individual's social security number," as an exception applicable to all public records. SSNs are also generally subject to a constitutional privacy right. *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, 842 N.E.2d 508, ¶ 17-18. Information thus exempt under state law may be redacted from incident reports. *Beacon Journal Publ'g Co. v. Akron*, 2004-Ohio-6557 at ¶ 55.

Based on the above, I recommend that the court order Chillicothe PD to provide requester with an unredacted copy of pages one through four of the Report, with the exception of SSNs.

Confidential Law Enforcement Investigatory Records Exception

{¶13} Under R.C. 149.43(A)(1)(h), "public record" does not include confidential law enforcement investigatory records (CLEIRs). R.C. 149.43(A)(2) defines the exception and provides, as relevant to this case:

> b. "'Confidential law enforcement investigatory record' means any record that *pertains to a law enforcement matter of a criminal*, quasi-criminal, civil, or administrative *nature,* but only *to the extent that the release of the record would create a high probability of disclosure of* any of the following:
>
> - * *
>
> c. (c) Specific confidential investigatory techniques or procedures or *specific investigatory work product*."

(Emphasis added.) The exception thus involves a two-part test; first, whether the withheld records pertain to a law enforcement matter of a criminal nature, and second, whether the release of those records would create a high probability of disclosure of specific investigatory work product. *State ex rel. Miller v. Ohio State Highway Patrol*, 136 Ohio St.3d 350, 2013-Ohio-3720, 995 N.E.2d 1175, ¶ 25.

Pertaining to a Law Enforcement Matter of a Criminal Nature

{¶14} A record "pertains to a law enforcement matter of a criminal nature" if it arises from suspicion by an agency with the authority to investigate of the violation of criminal law. *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety,* 148 Ohio St.3d 433, 2016-Ohio-7987, 71 N.E.3d 258, ¶ 39. Chillicothe PD has plenary police powers to enforce criminal laws. As to the nature of the Motoplex investigation, Officer Lytle states that three persons named in the Report "are under criminal investigation, and no criminal charges have been filed yet." (Response, Exhibit B - Lytle Aff. I at ¶ 9.) Page one of the Report, under "Crime Details," records the call for service (CFS) as

"Theft" under "State Statute 2913.02" and lists it as a "Completed" act. (Complaint at 11.) The first person listed under "Name Details" is assigned "Reason: VICTIM." *Id*. Page four under "Victim Details" names the same person, with "Offense, Theft." The Initial Narrative relates the victim's purchase of an extended warranty from a car seller and a statement by the alleged warranty provider that the car seller never paid for the warranty. The Initial Narrative ends with: "Investigation continues." The first line of the ensuing Supplementary Narrative identifies the author as the "detective * * * assigned to take over this investigation." (Report at 5, under seal.) The remainder of the Report contains additional information pertaining to the listed criminal offense. (See below.)

{¶15} I find that Chillicothe PD has met its burden to show that the Report "pertains to a law enforcement matter of a criminal nature."

Specific Investigatory Work Product

{¶16} In the second CLEIRs prong, a record must fall under one or more of the categories listed in R.C. 149.43(A)(2)(a) through (d). Chillicothe PD asserts that the withheld portions of the Report fall under subdivision (A)(2)(c), "specific investigatory work product." This term is not defined in statute, but has been construed by case law. "Specific investigatory work product" includes "any notes, working papers, memoranda or similar materials" and other "information assembled by law enforcement officials, in connection with a probable or pending criminal proceeding." *Cincinnati Enquirer v. ODPS* at ¶ 41, summarizing *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83 (1994). The investigatory work product exception is broadly inclusive once an investigation is underway: "This definition (working papers) is broad enough to bring under its umbrella any records compiled by law enforcement officials." *Steckman* at 434; s*ee generally State ex rel. Caster v. Columbus*, Slip Op. 2016-Ohio-8394, ¶ 25-29.

{¶17} However, a record is not investigatory work product if it merely triggers or initiates the investigation. *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 377-378, 662 N.E.2d 334 (1996) (9-1-1 tapes). The nature of a first report

that an incident has occurred is not "investigatory" when it is received or created prior to the commencement of an "investigation." The Supreme Court states that "incident reports initiate criminal investigations, but are not part of the investigation." *State ex rel. Beacon Journal Publ. Co. v. Maurer*, 91 Ohio St.3d 54, 56, 741 N.E.2d 511 (2001). Consistent with this purpose, both the Gazette's request and Chillicothe PD's response use the term "*initial* incident report." (Complaint at 28, 31.) In *Maurer*, the incident report was made on an Ohio Uniform Incident Report (UIR) form. *Id*. at 54. In the UIR Training Manual on page 2, the Administrative Section of the form is described as including the purpose "to record preliminary information regarding the incident."[1] The UIR form (or an electronic version thereof) often serves as the initial offense or incident report for law enforcement investigations. *See State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, 861 N.E.2d 530, ¶ 13 (citing *Maurer* and the UIR form).

{¶18} Ohio courts thus use "offense and incident reports" as shorthand for *form reports that initiate investigations*. *Lanham*, *Id*.; *Maurer* at 54, 56. Courts sometimes precede the term with "ongoing" or "routine" – adjectives originally used in *State ex rel. Beacon Journal Publishing Co. v. Univ. of Akron*, 64 Ohio St.2d 392, 415 N.E.2d 310 (1980). The Beacon Journal had requested materials from University of Akron police that

> d. can only be characterized as *routine factual* reports. The university's police were simply fulfilling the duty imposed upon all law enforcement agencies to generate *ongoing* offense reports, *chronicling factual events reported to them*.

Id. at 397. "Ongoing" thus appears to refer to the ongoing institutional duty of law enforcement agencies to accept and chronical factual events reported to them, and not to a duty, once an offense report is generated, for the agency to keep the report itself

[1] See *Ohio Uniform Incident Report (UIR) Training Manual* (August 2011), p. 1, at http://ocjs.ohio.gov/oibrs/Forms/UIR_Training.pdf. (Accessed February 8, 2018.) The UIR is a publication of the Ohio Department of Public Safety, Office of Criminal Justice Services, and is designed to capture crime data for the Ohio Incident-Based Reporting System and the FBI National Incident-Based Reporting System. The basic form is contained in the Manual immediately following the Table of Contents.

"ongoing." "Routine" is linked in *Beacon Journal* to "factual reports." The Court has since noted that "routine" is not part of the statutory definition of investigatory work product. *State ex. rel. National Broadcasting Co. v. Cleveland*, 57 Ohio St.3d 77, 80, 566 N.E.2d 146 (1991). As used in case law to describe incident reports, these terms refer only to the pre-investigation chronicling of events reported to the agency, i.e., an initial incident report.

{¶19} The Gazette relies on either the adjoining location of the supplementary narratives (immediately following the Initial Narrative in the printout), or the mere semantics of their maintenance in a Master *Incident Report*, when it argues that the withheld portions of the Report are "like the 35 pages attached to the Maurer incident report." (Reply at 2.) However, the facts in *Maurer* are readily distinguished. In *Maurer,* the reporting deputy attached thirty-five pages of transcripts and written statements to the UIR form, and expressly incorporated them by reference in the space used to describe events. *Maurer* at 54. In contrast, the supplementary narratives of Officer Lytle were not attached to, incorporated by reference, or even in existence when the incident report of Officer Tuttle initiated the Motoplex investigation. *Maurer* does not require a police department to release supplementary materials that were not incorporated by reference as part of the incident report. *State ex rel. Bardwell v. Rocky River Police Dept.,* 8th Dist. Cuyahoga No. 91022, 2009-Ohio-727, ¶ 45. *Accord State ex rel. WBNS 10 TV v. Franklin Cty. Sheriff's Office*, 151 Ohio App.3d 437, 2003-Ohio-409, 784 N.E.2d 207, ¶ 21 (10th Dist.) ("the key fact was the incorporation of the statements into the report"). Supplementary narratives added to an electronic file are not "attached" to the initial incident report like the contemporaneous physical attachment in *Maurer*. Chillicothe PD explains that

> e. [t]he Chillicothe Police Department utilizes a computer electronic document—labeled a Master Incident Report—that documents both an initial incident report taken by the Chillicothe Ohio Police Department, as well as any supplementary information gathered throughout an investigation that is subsequently conducted by the

> Chillicothe Ohio Police Department. All supplementary information contained within a Master Incident Report reflects information gathered after the initial incident report is completed.
>
> f. All supplementary information included in the Master Incident Report for the Tracy Bettendorf and Carey Ackley ongoing investigation is found on pages five through twelve of the Master Incident Report, and includes my investigatory notes and other evidence I have collected in connection with the ongoing criminal investigation of Tracy Bettendorf, Carey Ackley, and Midwest Motoplex.

(Lytle Aff. I at ¶ 7-8.) The first supplementary narrative at the bottom of page five was entered after Lytle was assigned "to take over this investigation" – a defining event separating it from the initial incident report. I find that the withheld portions of the Report were neither physically attached to nor incorporated by reference in the initial incident report of Officer Tuttle, and are thus distinguished from the documents attached to the initial incident report in *Maurer*.

{¶20} In response to the Gazette's request for "the initial incident reports," Chillicothe PD produced pages one through five of the Master Incident Report. (Complaint at 11-14; Response at 23.) The Incident Information and Initial Narrative on these pages are dated 11/25/2015 – the date that the victim contacted Chillicothe PD. As of "Disposition Date 11/25/2015," the "RMS [records management system] Disposition" on page one states: "Investigation Pending." The department contact information on page twelve of the Report, under seal, shows that a call was taken on 11/25/2015 by a dispatcher, and continued or returned by Officer Jeremy Tuttle. At the top of page five Tuttle is credited with reporting the Initial Narrative, and apparently with completing the Incident Information fields. Based on chronology, content, and authorship, I find that page one through "Initial Narrative" on page five constitutes an initial incident report relating to the Motoplex investigation.

{¶21} In addition, I find that page twelve of the Report is part of the initial incident report. Despite appearing at the end of a printout, the entries on page twelve are all

dated 11/25/2015. I find that their status does not depend on their sequential position in the Report, which is kept in an easily edited electronic format. The entries reflect "PIN Activity,"[2] "Dispatch Activity," and "Property Details," and reference Officer Tuttle and a dispatcher rather than Officer Lytle. Chillicothe PD notably refrains from characterizing any information on page twelve as having been generated after the initiation of the investigation. (January 17, 2018 Lytle Aff. II at ¶ 6-11.) The entries on page twelve appear to be pre-investigation information recorded on 11/25/2015. This impression is corroborated by a monetary value in Property Details that matches a figure in Officer Tuttle's Initial Narrative. Chillicothe PD offers no explanation to the contrary. I find that page twelve of the Report is not shown to be "investigatory" work product, and is instead responsive to the request for the "initial incident reports."

{¶22} The term "incident report" does not include later reports about the incident, or additional victim complaints arising from the same incident. Under a similar investigatory records exception, 32 investor complaints received after a securities investigation was underway were found not to be analogous to police "incident reports" because they did not initiate the investigation. *State ex rel. Cincinnati Enquirer v. Joyce*, 97 Ohio St.3d 192, 2002-Ohio-5807, 777 N.E.2d 253, ¶ 17-18. After an investigation has been initiated, supplementary reports of investigators are "investigatory" work product. *See State ex rel. Fields v. Cervenik*, 8th Dist. Cuyahoga No. 86889, 2006-Ohio-3969, ¶ 22, 26, 30-32, 34, 35, 48, 52, 55, 58, 59, 77, 81; *Perry v. Onunwor*, 8th Dist. Cuyahoga No. 78398, 2000 Ohio App. LEXIS 5893, *5 (Dec. 7, 2000).

{¶23} Turning to the remainder of the Report, the investigating officer offers a detailed description of the withheld information as his investigatory work product. (Lytle Aff. II, *Id*.) On review *in camera*, I find that the entry redacted from page 5 reflects the assignment of Officer Lytle "to take over this investigation" and summarizes a witness contact he received. The entry is labeled using the code "NS – Supplementary

[2] The section title "PIN Activity" appears at the bottom of page eleven. The analysis refers only to "page twelve" for concision.

Narrative," in contrast with the code "NI – Initial Narrative" used for the narrative of Officer Tuttle. Although Lytle's first Supplementary Narrative is dated 11/25/2015, I find that it was part of a formal investigation by then underway. Pages six through eleven contain sixteen additional entries by Officer Lytle, all labeled NS – Supplementary Narrative, with dates beginning in January 2016. I find that the contents of the supplementary narrative entries all fall under one or more of these categories: notes, summaries, contacts, or investigative plans. Based on the testimonial and documentary evidence, I find that the withheld information on pages five through eleven constitutes "specific investigatory work product."

{¶24} The Gazette asserts that even if portions of the Report may be withheld under CLEIRs, Chillicothe PD must disclose any fragment that is not CLEIRs. (Reply at 2.) To be sure, R.C. 149.43(B)(1) requires:

> g. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt.

The Gazette cites *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety (DPS)*, 148 Ohio St.3d 433, 2016-Ohio-7987, 71 N.E.3d 258 for the proposition that "merely because a [dashcam video] record includes some CLEIR material, the public office may not withhold the entire record." (Reply at 2.) Here, Chillicothe PD has not withheld the entire Report, but only the portions claimed as investigatory work product. Moreover, the identification of non-exempt material in DPS was based on facts and circumstances of that case in which 1) much of the information in the video was duplicated in the initial incident report, 2) the recordings were created automatically rather than intentionally, and 3) a large portion of the recordings captured incidental images such as passersby, discussions about reopening highway traffic, and an empty car seat, that did not involve any investigative functions at all. *Id*. at ¶ 47-50. *See also State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 448, 732 N.E.2d 969 (2000) (copies of

newspaper articles and statutes in file were not investigatory work product). None of these factors apply to the intentional, relevant notes and other work product documenting the progress of the Motoplex investigation. I find that all of the supplementary narratives text constitutes CLEIRs investigatory work product.

{¶25} Moreover, fragments of non-exempt information scattered within generally exempt material may be so "inextricably intertwined" as to also be exempt from disclosure. *State ex rel. Master v. Cleveland*, 76 Ohio St.3d 340, 342, 667 N.E.2d 974 (1996). Combing through law enforcement investigatory work product to find arguably non-exempt words or lines is the type of undue and needless interference that the Supreme Court sought to preclude by applying Black's broad definition of the "work product rule" to investigatory work product. *Steckman v. Jackson*, 70 Ohio St.3d at 434. In *State ex rel. Pietrangelo v. Avon Lake*, 146 Ohio St.3d 292, 2016-Ohio-2974, 55 N.E.3d 1091, the Court noted that the city had provided the requester with a professional fee summary (compare to initial incident report). The Court found that the city had disclosed all of the nonexempt records, and with regard to any other non-exempt data in the exempt records:

> h. To the extent that Pietrangelo requests the dates, hours, and rates not identified in the professional-fee summary, they are inextricably intertwined with the narratives of services that are privileged materials. Such information is exempt from disclosure.

Id. at ¶ 17. In this case, I find that the withheld portions of pages five through eleven do not contain any incidental or extraneous material, and are entirely work product documenting investigatory activities. Even were any words or figures in the supplementary narratives arguably non-exempt, I find they would be inextricably intertwined with the exempt investigatory work product.

{¶26} I find that the withheld portions of pages five through eleven meet the definition of CLEIRs "specific investigatory work product" and are properly withheld. I

further find that the information on page twelve and the title at the bottom of page eleven do not meet the definition of investigatory work product and must be disclosed.

Required Explanation, Including Legal Authority

{¶27} The Gazette claims that Chillicothe PD "refused to provide relevant legal authority" for its redactions and withholding. R.C. 149.43(B)(3) requires that

> i. If 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.

In its initial response email, Chillicothe PD denied release of records "as they relate to a pending lawsuit and an open criminal investigation." (Complaint at 30.) In its next email, the office added that "[p]ages five through twelve are exempt from availability pursuant to R.C. 149.43(A)(1)(h) and R.C. 149.43(A)(2)(c)." (Complaint at 28.) Chillicothe PD thus explained that the request was denied because the records related to an open criminal investigation, citing as authority first the general CLEIRs statute, and then the specific subdivision of the CLEIRs definition that it relied on.

{¶28} In its response to this explanation and legal authority, the Gazette requested

> j. a general description of the content of those pages so I can make an assessment of your claim. By a "general description" indicate if the pages contain witness statements, crime scene photographs, measurements, etc. You can provide this information without disclosing the substance of the information.

(Complaint at 28.) However, a public office is not required to provide an itemized list of content within excepted records. A public office is "under no duty under R.C. 149.43 to submit a privilege log to preserve their claimed exception." *State ex rel. Latham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, 985 N.E.2d 467, ¶ 24 (attorney-client privilege). I find that Chillicothe PD's reference to the records as relating to an open criminal investigation, with citation to the relevant CLEIRs statutes, satisfied the requirement for "an explanation, including legal authority, setting forth why the request was denied."

Receipt of Additional Pleadings

{¶29} After filing the pleadings requested in the court's order of December 27, 2017, both parties submitted additional pleadings. Although unsolicited pleadings can delay the "expeditions and economical procedure" intended for actions brought under R.C. 2743.75, in this instance the special master directs the clerk to accept all of the pleadings for filing pursuant to R.C. 2743.75(E)(2). The special master hereby denies respondent's motion to strike requester's supplemental memorandum, and grants its alternative motion for leave to file its reply to same.

Timeliness

{¶30} Chillicothe PD did not produce a copy of the Initial Narrative portion of the initial incident report until three months after the Gazette's September 21, 2017 request, and has withheld page twelve of the Report through the present. I find that Chillicothe PD failed to comply with its obligation under R.C. 149.43(B)(1) to provide copies of all records that were required to be disclosed "within a reasonable period of time."

Conclusion

{¶31} Upon consideration of the pleadings, attachments, and responsive records filed under seal, I recommend that the court find that Chillicothe PD's motion to dismiss the claim as moot be GRANTED as to the portions released to the Gazette prior to this report and recommendation. I further recommend that the court DENY the claim for production of the contents withheld in pages five through eleven. I further recommend that the court GRANT the claim for production of page twelve of the Report, for the title at the bottom of page eleven, and for a copy of pages one through four with no redactions other than SSNs.

{¶32} I recommend the court order that the Gazette is entitled to recover from Chillicothe PD the costs associated with this action, including the twenty-five-dollar filing fee. R.C. 2743.75(F)(3)(b).

{¶33} *Pursuant to R.C. 2743.75(F)(2), either party may file a written objection with the clerk of the Court of Claims of Ohio within seven (7) business days after receiving this report and recommendation. Any objection shall be specific and state with particularity all grounds for the objection. A party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusions in this report and recommendation unless a timely objection was filed thereto. R.C. 2743.75(G)(1).*

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