

IN THE COURT OF CLAIMS OF OHIO

JOSHUA DAVID MORRISON

Requester

v.

CITY OF MOUNT VERNON
LAW DIRECTOR'S OFFICE

Respondent

Case No. 2022-00482PQ

Special Master Jeff Clark

REPORT AND RECOMMENDATION

{¶1} The Ohio Public Records Act (PRA) requires copies of public records to be made available to any person upon request. The state policy underlying the PRA is that open government serves the public interest and our democratic system. *State ex rel. Gannett Satellite Information Network, Inc. v. Petro*, 80 Ohio St.3d 261, 264, 685 N.E.2d 1223 (1997). To that end, the public records statute must be construed liberally in favor of broad access, with any doubt resolved in favor of disclosure of public records. *State ex rel. Rogers v. Dept. of Rehab. & Corr.*, 155 Ohio St.3d 545, 2018-Ohio-5111, 122 N.E.3d 1208, ¶ 6. This action is filed under R.C. 2743.75, which provides an expeditious and economical procedure to enforce the PRA in the Court of Claims.

{¶2} On September 11, 2021, requester Joshua Morrison made a public records request to the Law Director of the City of Mount Vernon (“the City”) seeking copies of “[a]ny and all requests for Public Records received by the City of Mount Vernon, Ohio between May 1, 2021 and June 30, 2021.” Morrison sought prompt delivery, asking that “[i]f some records become available sooner than others, please deliver them as they become available rather than waiting for all records to become available. (Complaint at 2.) On January 6, 2022, Morrison sent a follow-up noting that the request “has not been fulfilled.” (Reply at 2.) The record includes no evidence that the Law Director acknowledged receipt of these requests or produced any responsive records until August 9, 2022.

{¶3} On June 14, 2022, Morrison filed a complaint under R.C. 2743.75 alleging denial of timely access to public records. Following mediation, the City filed an answer (Response) on September 26, 2022. On October 3, 2022, Morrison filed a reply.¹

Burden of Proof

{¶4} The requester in an action under R.C. 2743.75 bears an overall burden to establish a public records violation by clear and convincing evidence. *Hurt v. Liberty Twp.*, 2017-Ohio-7820, 97 N.E.3d 1153, ¶ 27-30 (5th Dist.). The requester bears an initial burden of production “to plead and prove facts showing that the requester sought an identifiable public record pursuant to R.C. 149.43(B)(1) and that the public office or records custodian did not make the record available.” *Welsh-Huggins v. Jefferson Cty. Prosecutor’s Office*, 163 Ohio St.3d 337, 2020-Ohio-5371, 170 N.E.3d 768, ¶ 33. As written public record requests are themselves records documenting a statutory obligation of the public office receiving them, and Morrison did not receive these records prior to the filing of the complaint, Morrison clearly met this initial burden of production.

Motion to Dismiss

{¶5} To dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt the claimant can prove no set of facts warranting relief after all factual allegations of the complaint are presumed true and all reasonable inferences are made in claimant’s favor. *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St.3d 580, 581, 669 N.E.2d 835 (1996). As long as there is a set of facts consistent with the complaint that would allow the claimant to recover, dismissal for failure to state a claim is not proper. *State ex rel. V.K.B. v. Smith*, 138 Ohio St.3d 84, 2013-Ohio-5477, 3 N.E.3d 1184, ¶ 10.

{¶6} The City does not dispute that Morrison reasonably identified the records he sought but moves to dismiss the complaint on the ground that it has now produced the requested records. (Response.) On review, the Special Master finds that mootness is not conclusively shown on the face of the complaint. Moreover, as the matter is now fully

¹ The reply was not accompanied by a completed proof of service, in the absence of which “[d]ocuments filed with the court shall not be considered.” Civ.R. 5(B)(4). However, in the interest of justice the Special Master reviewed the reply and will reference certain portions below.

briefed this defense is subsumed in the arguments to deny the claim on the merits. It is therefore recommended the motion to dismiss be denied.

Suggestion of Mootness

{¶7} 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. The City asserts it has now provided Morrison with the available public records responsive to his request. (Response at ¶ 1.) Morrison concurs that the records were produced during litigation. (Reply.) The Special Master accordingly finds the claim for production of records is moot.

{¶8} Independent of the claim for production, Morrison's claim of untimeliness in production of the documents is not moot. (Reply.) "[A] separate claim based on the untimeliness of the response persists unless copies of all required records were made available 'within a reasonable period of time.' R.C. 149.43(B)(1)." *State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 22, 2018-Ohio-5110, 123 N.E.3d 895, ¶ 19.

Timeliness

{¶9} "The primary duty of a public office when it has received a public-records request is to promptly provide any responsive records within a reasonable amount of time and when a records request is denied, to inform the requester of that denial and provide the reasons for that denial. R.C. 149.43(B)(1) and (3)." *Cordell v. Paden*, 156 Ohio St.3d 394, 2019-Ohio-1216, 128 N.E.3d 179, ¶ 11. Offices have a statutory duty to "organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with [R.C. 149.43(B)]." R.C. 149.43(B)(2). Whether a public office has provided records within a "reasonable period of time" depends upon all the pertinent facts and circumstances of the case. *Cordell* at ¶ 12.

{¶10} The eleven months taken by the City to provide *any* response to Morrison's request is vastly beyond a "reasonable period of time." See generally *State ex rel. Ware v. Bureau of Sentence Computation*, 10th Dist. Franklin No. 21-AP-419, 2022-Ohio-3562, ¶ 2, 16-17 and cases cited therein. Even where unusual events impact their response processes, such as the Covid-19 pandemic, public offices must comply with the duty to provide records within a reasonable period of time. *State ex rel. Schumann v. Cleveland*,

8th Dist. Cuyahoga No. 109776, 2020-Ohio-4920, ¶ 8-9; See *State ex rel. Ware v. Akron*, 164 Ohio St.3d 557, 2021-Ohio-624, 174 N.E.3d 724, ¶ 5, 18 (illness of employee and cyber disruption of city's e-mail). But in this case the City offers no excuse for its delay, or for waiting until two months after this action was filed before responding to a straightforward and non-voluminous request. See *State ex rel. Simonsen v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 08AP-21, 2009-Ohio-442, ¶ 10, 36; *State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. & Corr.*, 156 Ohio St.3d 56, 2018-Ohio-5133, 123 N.E.3d 928, ¶ 31-33. Without some extraordinary explanation, even a one-month delay to provide copies of public records requests received by the City of Mount Vernon in a two-month period would be unreasonable.

{¶11} On the facts and circumstances before the court, the City's delay of eleven months between receiving the request and providing records, or even acknowledging the request, constitutes a failure to make copies of requested records available within a reasonable period of time, in violation of R.C. 149.43(B)(1).

Conclusion

{¶12} Upon consideration of the pleadings and attachments the Special Master recommends the court find requester's claim for production of records moot. The Special Master further recommends the court find that respondent failed to produce the requested public records within a reasonable period of time. It is recommended requester be entitled to recover from respondent the amount of the filing fee of twenty-five dollars and any other costs associated with the action that were incurred by requester, and that court costs be assessed to respondent.

{¶13} 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).*

JEFF CLARK
Special Master

Filed October 18, 2022
Sent to S.C. Reporter 11/10/22