

**IN THE COURT OF CLAIMS OF OHIO**

WILLIAM E. LANE	Case Nos. 2025-00157PQ and 2025-00276PQ
Requester	Special Master Todd Marti
v.	<u>REPORT AND RECOMMENDATION</u>
PORTAGE COUNTY SHERIFF'S OFFICE	
Respondent	

{¶1} These consolidated cases are before me for a R.C. 2743.75(F) report and recommendation. I recommend that the court: (1) find that respondent unreasonably delayed its responses to the public records requests underlying these cases, (2) order respondent to pay requester’s filing fees and costs, (3) order respondent to pay all other costs in these cases, and (4) deny all other relief.

**I. Background.**

{¶2} Requester William Lane is a resident of Portage County. In May and July of 2024, he submitted public records requests to the respondent Portage County Sheriff’s Office (“Sheriff”) for records regarding firearms and other property the Sheriff confiscated. Mr. Lane made a separate request in May of 2024 for records related to a deputy who had sued Portage County. The Sheriff had not responded to those requests when these cases were filed in February and March of 2025. *Complaint*, filed February 24, 2025 in Case No. 2025-00157PQ; *Complaint*, filed March 17, 2025 in Case No. 2025-00276PQ.

{¶3} Mr. Lane filed these cases to enforce his requests, asserting his right to the records and that the Sheriff had unduly delayed his response to his requests. The cases were consolidated, and mediation was bypassed because of the time that the underlying records requests had been pending. A schedule was set for the parties to file evidence and memoranda supporting their positions. That schedule has run its course, making

these cases ripe for decision. *Order Bypassing Mediation, Consolidating Cases and Setting Case Schedule*, entered March 18, 2025.<sup>1</sup>

## II. Analysis.

### A. Requester's production claims fail.

#### 1. Requester's production claim in case No. 2924-00157PQ is moot.

{¶4} “In general, the provision of requested records to a [requester] in a public-records \*\*\* case renders the \*\*\* claim moot.” *State ex rel. Cincinnati Enquirer v. Dupuis*, 2002-Ohio-7041, ¶ 8. A public records claim can be mooted by the respondent producing the responsive records during the course of the litigation. *State ex rel. Striker v. Smith*, 2011-Ohio-2878, ¶¶ 17-18, 22.

{¶5} The Sheriff filed and served the records he asserts are responsive to the requests underlying Case No. 2025-00157PQ after that case was filed. Mr. Lane has stated that “[r]espondent has satisfied requester’s request regarding case 2025-00157PQ.” I therefore recommend that the court find that Mr. Lane’s production claim in Case No. 2024-00157PQ is moot. *Notice Concerning Public Records Sent to Requester*, filed March 18, 2025 in Case No. 2025-00157PQ; *PQ Miscellaneous*, filed April 2, 2025, p. 1.

#### 2. Requester's production claim in Case No. 2025-00276PQ fails for want of proof.

{¶6} Mr. Lane made “a public records request for the complaint filed by deputy poledica against captain Mike Davis[.]” [sic]. His request further stated that “[t]his should be a pretty easy to locate since there’s a lawsuit about it.” The Sheriff construed that request as seeking an internal, administrative, complaint. That construction is reasonable given that the request implicitly distinguished the complaint sought from whatever complaint commenced Deputy Poledica’s lawsuit. That construction is also supported by the fact that Mr. Lane seems to have already had the complaint that commenced the lawsuit. Based on that reading of Mr. Lane’s request, the Sheriff has submitted an email

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<sup>1</sup> All references to specific pages of pleadings and other filings are to the pages of the PDF copies posted on the court’s docket. All references to a filing without reference to either consolidated case is to the copy filed in both consolidated cases.

asserting that it has no responsive record because “Poledica went right to a lawsuit.” *Complaint*, filed March 17, 2025 in Case No. 2025-00276PQ., p. 2; *PQ Miscellaneous*, filed April 2, 2025, p. 1; *Response of Respondent Portage County Sheriff’s Office*, filed April 1, 2025, p. 5.

{¶7} “If the public office provides affidavit testimony that no records exist, the requester must provide clear and convincing evidence that the records do exist. However, ‘some evidence’ is sufficient if the office does not provide affidavit testimony negating the existence of additional responsive records.” *Sell v. Trumbull Cty. Juv. Div., Ct. of Cl. No. 2024-Ohio-6139*, ¶ 6 (Ct. of Cl.) (Authorities omitted). The Sheriff did not submit affidavit testimony that it does not have the complaint Mr. Lane seeks, but did provide other evidence. Mr. Lane must therefore come forward with some evidence that the Sheriff does have the complaint. He has produced nothing on that point. I therefore recommend that the court deny his claim for production of records.

**B. Respondent unreasonably delayed its response to requester’s public records requests.**

{¶8} Although Mr. Lane’s production claims fail, his claims that the Sheriff improperly delayed its response to his requests remain alive.<sup>2</sup> *Sutelan v. Ohio State Univ.*, 2019-Ohio-3675, ¶ 21, adopted in relevant part, 2019-Ohio-4026 (Ct. of Cl.).

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<sup>2</sup> The fact that the delay claims were asserted in the correspondence attached to the complaints, rather than the bodies of the complaints, was sufficient—in these cases—to present these claims. The complaints, including the attachments, were short and the attachments unambiguously stated Mr. Layne’s claim that the Sheriff had unduly delayed its responses. *Complaint* in Case No. 2025-00157PQ, p. 3 (“You have had. Plenty of time to fulfill the request. Please let me know so I can file with the courts if you were refusing to do your job.”) [sic]; *Complaint* in Case No. 2025-00276PQ, p. 2 (“Once again, you have had plenty of time to fulfill my request. Let me know if I have to file with the courts in order to audit my government.”). That clarity, and the absence of confusion about which requests are at issue, gave the Sheriff ample notice of the delay claims, thus distinguishing this case from *Schaffer v. Ohio State Univ.*, 2024-Ohio-2185, ¶¶ 58-65, adopted 2024-Ohio-2625 (Ct. of Cl.). And in any event, the fact that the Sheriff addressed his delay in responding to the requests shows that he “impliedly consented to [resolution] of these claims” within the meaning of *State ex rel. Taxpayers Coalition v. City of Lakewood*, 86 Ohio St.3d 385, 391(1999). The delay claims are therefore properly before the court.

{¶9} R.C. 149.43(B)(1) mandates that “upon request \*\*\* a public office \*\*\* shall make copies of the requested public record available to the requester \*\*\* *within a reasonable period of time.*” (Emphasis added). A public office’s compliance with that requirement is evaluated based on the facts and circumstances of the request. *State ex rel. Morgan v. Strickland*, 2009-Ohio-1901, ¶ 10; *State ex rel. Kesterson v. Kent State Univ.*, 2018-Ohio-5108, ¶ 16. Several aspects of this case establish that the Sheriff unreasonably delayed his response to the requests underlying Case No. 2025-00157PQ.

{¶10} *First, the delay here is longer than delays found unreasonable in other cases.* Although each delay claim turns on its own facts, some guidance is provided by similar cases. The delays in Case No. 2024-00157PQ were 210 and 162 working days, from May 3, 2024, and July 15, 2024 to March 12, 2025. *Complaint*, in Case No. 2025-00157PQ, pp. 2-3; *Notice Concerning Public Records Sent to Requester*, filed March 11, 2025, in Case No. 2025-00157PQ. The delay in Case No. 2025-00276PQ was 225 working days, from May 2, 2024, to March 18, 2025. *Complaint*, in Case No. 2025-00276PQ, p. 2; *Response of Respondent Portage County Sheriff’s Office*, filed April 1, 2025, p. 5. Those delays were longer than the delays found to be unreasonable in other cases. See *State ex rel. Ware v. Bur. of Sentence Computation*, 2022-Ohio-3562, ¶ 17 (10th Dist.); *Jones v. Columbus Div. of Police*, 2025-Ohio-465, ¶ 21 (10th Dist.) (both surveying cases). While not conclusive, that suggests that the delays involved here were unreasonable.

{¶11} *Second, the requests involved limited numbers of records and presented limited review/redaction issues.* Public offices are given more time to respond to requests for large volumes or diverse types of records. Conversely, they are allowed less time for narrower requests. Compare *State ex rel. Shaughnessy v. City of Cleveland*, 2016-Ohio-8447, ¶ 14; *Kesterson*, 2018-Ohio-5108, ¶ 17; *State ex rel. Patituce & Assocs., LLC v. City of Cleveland*, 2017-Ohio-300, ¶ 7 (8th Dist.); and *Easton Telecom Servs., LLC. v. Village of Woodmere*, 2019-Ohio-3282, ¶¶ 46-49 (8th Dist.); with *Miller v. Ohio Dept. of Education*, 2016-Ohio-8534, ¶ 8 (10th Dist.); *State ex rel. Ware v. Bur. of Sentence Computation*, 2022-Ohio-3562, ¶ 19 (10th Dist.); and *Foulk v. City of Upper Arlington*, 2017-Ohio-4249, ¶ 11, adopted 2017-Ohio-5767 (Ct. of Cl.). Relatedly, more time is allowed if the volume or nature of responsive records make legal review and redaction

more time consuming. Compare *State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner's Office*, 2017-Ohio-8988, ¶ 59 and *Anderson v. Greater Cleveland Regional Transit Auth.*, 2018-Ohio-3653, ¶ 7, adopted, 2018-Ohio-4596 (Ct. of Cl.) with *Miller*, 2016-Ohio-8534, ¶ 8; *State ex rel. Simonsen v. Ohio Dept. of Rehab. & Correction*, 2009-Ohio-442, ¶ 10 (10th Dist.); *State ex rel. Korecky v. City of Cleveland*, 2020-Ohio-273, ¶ 19 (8th Dist.); *Ware*, 2022-Ohio-3562, ¶ 19.

{¶12} The requests at issue here were limited, seeking only three types of records. Quantitatively, it generated a relatively small volume of responsive records, 57 pages. *Notice Concerning Public Records Sent to Requester*, filed March 18, 2025 in Case No. 2025-00157PQ. Qualitatively, the review/redaction issues were straight forward. It should not have taken the Sheriff hundreds of working days to determine what redactions were needed.

{¶13} *Third, the production only occurred after litigation commenced.* Courts are more likely to find delayed production unreasonable if it occurs after commencement of litigation. *Miller*, 2016-Ohio-8534, ¶ 8; *Ware*, 2022-Ohio-3562, ¶ 19; *State ex rel. Schumann v. City of Cleveland*, 2020-Ohio-4920, ¶ 9 (8th Dist.). That makes sense; it is difficult to justify a delay that requires the requester on one hand, and the courts and the public office (and the taxpayers who fund both) on the other, to expend time and money on an avoidable controversy. That is what we have here.

{¶14} *Fourth, the Sheriff has offered no explanation for that wasteful delay.* Other courts have held that is an indicia of undue delay. *Ware*, 2022-Ohio-3562, ¶ 19; *State ex rel. Clark-Shawnee Local School Dist. Bd. of Edn. v. City of Springfield*, 2024-Ohio-2483, ¶ 26. (2d Dist.).

{¶15} I therefore recommend that the court find that the Sheriff violated R.C. 149.43(B)(1) by unreasonably delaying his response to Mr. Lane's requests.

{¶16} That recommendation is not undermined by the Sheriff's argument that precedent construing R.C. 149.43(B)(3) gave him leeway to wait until after this case was filed to explain his denial of Mr. Lane's requests. R.C. 149(B)(3) is not the controlling statute here. The Sheriff's obligation to promptly respond to Mr. Lane's requests arose under R.C. 149.43(B)(1), not R.C. 149.43(B)(3). Indeed, the precedent the Sheriff relies

upon notes that distinction. *State ex rel. Ware v. Giavasis*, 2020-Ohio-3700, ¶ 12. See also, *State ex rel. Adkins v. Cantrell*, 2023-Ohio-1323, ¶ 37. Precedent construing R.C. 149.43(B)(3) is therefore immaterial to delay claims made through R.C. 149.43(B)(1).

**C. Requester is entitled to recover his filing fee and costs; respondent should bear the balance of the costs.**

{¶17} R.C. 2743.75(F)(3)(b) provides that the “aggrieved person shall be entitled to recover from the public office \*\*\* the amount of the filing fee \*\*\* and any other costs associated with the action[.]” Mr. Lane was aggrieved by the Sheriff’s unreasonable delay in responding to his request’s. I therefore recommend that he recover his filing fees and the costs he incurred in these cases. I also recommend that the Sheriff bear the balance of the costs of these cases.

**III. Conclusion.**

{¶18} In light of the foregoing, I recommend that the court:

- A. Find that respondent unreasonably delayed its responses to the public records requests underlying these cases.
- B. Order respondent to pay requester’s filing fees and costs.
- C. Order respondent to pay all other costs in these cases; and
- D. Deny all other relief.

{¶19} 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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TODD MARTI

Case No. 2025-00157PQ  
Case No. 2025-00276PQ

-7- REPORT AND RECOMMENDATION

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**Sent to S.C. Reporter 7/8/25**