

IN THE COURT OF CLAIMS OF OHIO

JAKIMAH R. DYE

Requester

v.

CITY OF CLEVELAND

Respondent

Case No. 2025-00216PQ

Judge Lisa L. Sadler

DECISION & ENTRY

{¶1} On July 15, 2025, Requester (Dye) timely filed objections to the Special Master’s Report and Recommendation (R&R).¹ On July 30, 2025, Respondent (Cleveland) timely response to Dye’s objections. Cleveland did not file any objections. For the following reasons, the Court denies Dye’s objections and adopts the Special Master’s R&R.

I. Background

{¶2} Dye filed a Complaint in this Court seeking documents related to her employment with and termination from Cleveland, which she requested from Cleveland in six different records requests—Cleveland Request Nos. P01654-80724, C001779-80724, C0030307-120524, C003178-122624, C003190-12304, and C003191-123024.

A. Request No. P01654-80724

{¶3} In this request, Dye sought records related to disciplinary proceedings of employees other than herself. In response to this request, Cleveland initially failed to

¹ In its response, Cleveland argues that Dye failed to timely file her objections because the R&R was filed on June 3, 2025, and Dye did not file her objections until July 15, 2025. However, pursuant to 2743.75(F)(2) “[e]ither party may object to the report and recommendation within seven business days *after receiving* the report and recommendation” (emphasis added). Here, the Clerk did not receive confirmation that USPS delivered the R&R to Dye. Therefore, the only evidence that Dye received the R&R is the filing of objections. Therefore, the Court finds that Dye received the R&R on July 15, 2025, and filed objections that day, within the statutory time limit.

provide records, however, after Dye filed this case, it provided 219 pages of records. Cleveland also submitted an affidavit that it produced all responsive records for this request. In his R&R the Special Master determined that Dye's claim for production of records as to this request was moot because records were produced, Dye failed to provide clear and convincing evidence that more records existed, and Dye did not specifically challenge the redactions to the records provided. However, the Special Master also determined that Cleveland unreasonably delayed its response to this request and recommended that the Court find the Cleveland violated R.C. 149.43(B)(1).

B. Request No. C001779-80724

{¶4} In this request, Dye sought records related to her termination and the personnel files of officials involved in her termination, including the metadata associated with these records. Prior to the commencement of this case, Cleveland provided one incomplete personnel file, however, Cleveland eventually produced 717 pages of records in response to this request and provided affidavit testimony that all responsive records were provided. As in Request No. P01654-80724, the Special Master determined that the claim for production was moot and recommended that the Court find the Cleveland violated R.C. 149.43(B)(1). The Special Master specifically found that Dye did not submit any evidence that Cleveland has the metadata related to these records and therefore, the request for production of metadata is also moot.

C. Request No. C0030307-120524

{¶5} Dye requested personnel records of several Cleveland employees and records and emails related to a staff retreat. Prior to the R&R Cleveland produced thousands of pages of responsive records and withheld records based on attorney-client privilege. The Special Master, in his R&R, recommended that the Court order Cleveland to produce the responsive records that it did not prove fall under attorney-client privilege. The Special Master recommended that the Court find Cleveland violated R.C. 149.43(B)(1) with regard to this request.

D. Request No. C003178-122624

{¶6} Dye sought communications between several Cleveland employees containing certain search terms in this request. After this case was filed, Cleveland produced several hundred pages of records with redactions. The Special Master

determined that because Cleveland provided an affidavit stating that it provided all responsive records to this request, Dye's production claim was moot except regarding records improperly redacted based on attorney-client privilege. Based on case law and an in camera review of the redacted records, the Special Master recommended that the Court order Cleveland to produce unredacted copies of communications where Cleveland's lawyers were discussing public relations matters, not legal issues. Further, the Special Master recommended that the Court find that Cleveland was in violation of R.C. 149.43(B)(1) with regard to this request.

E. Request Nos. C003190-12304 and C003191-123024

{¶7} For these requests, Dye sought certain emails and other written communications within a specific time frame and with certain key words or senders and recipients. Dye also requested certain documents completed by a specific Cleveland employee. Cleveland failed to respond prior to this case being filed, therefore, the Special Master recommended that the Court order Cleveland to produce all responsive records despite its overbreadth defense.

F. Other claims

{¶8} Pertinent to the objections at hand, the Special Master recommended that the Court deny several of Dye's requests from the Court. First, the Special Master recommended that the Court deny Dye's request that the Court order Cleveland to produce a privilege log because R.C. 143.43 does not require such production. Further, Dye requested that the Court order Cleveland to describe the searches it took to respond to her records requests; the Special Master recommended that the Court deny this relief because the Supreme Court has held that this is not required under R.C. 149.43. Finally, the Special Master recommended that the Court deny Dye's request for the metadata for all of the requests except for Request No. C001779-80724, because Dye only specifically requested the metadata in that request.

II. Objections

{¶9} Dye presents three main objections to the R&R. First, that it provides an incomplete resolution to Request Nos. C003190-123024 and C003191-123024 because Cleveland did not provide a specific legal basis for claimed exemptions, provide an exemption log, or identify what responsive records were located or reviewed. Second,

that the R&R relies too heavily on Cleveland's assertion that no responsive records exist. And third, that the Special Master erred when he found that metadata must be specifically requested. Because of these objections, Dye requests that the Court sustain the "favorable" portions of the R&R, compel Cleveland to either produce all responsive records or a sufficient legal explanation for Request Nos. C003190-123024 and C003191-123024, order Cleveland to produce records in native format or produce the full metadata for all records, require Cleveland to produce affidavit testimony regarding the search process, acknowledge and address Cleveland's "pattern of delay and obstruction".² For the reasons below, the Court OVERRULES Dye's objections.

III. Law and Analysis

{¶10} Dye's first objection regarding Request Nos. C003190-123024 and C003191-123024 is that the Special Master erred in his recommendations because he did not recommend that Cleveland be ordered to provide a specific legal basis for claimed exemptions, provide an exemption log, or identify what records were located or reviewed. In the R&R, the Special Master recommended that "Cleveland be ordered to produce all records responsive to this request, subject to appropriate redactions to protect third parties' statutory rights." R&R p. 13.

{¶11} For these records, Cleveland only asserted exemption was overbreadth. The Supreme Court has held that, "permitting a public official to oppose a request as overbroad for the first time in litigation would enable the official to avoid the duty when denying a request as overly broad, to" comply with R.C. 149.43(B)(2) and allow a requester the opportunity to revise the request. *State ex rel. Summers v. Fox*, 2020-Ohio-5585, ¶ 74.

{¶12} Here, the Special Master correctly determined that because overbreadth cannot be raised for the first time in litigation, Cleveland should be ordered to produce all responsive records. Because the Special Master recommended an order of full production, Dye's objection that Cleveland should be ordered to provide legal basis for exemptions and an exemption log, is OVERRULED as no valid exemptions were claimed.

² R.C. 2743.75(F)(2) states: "[a]ny objection to the report and recommendation shall be specific and state with particularity all grounds for the objection." The Court finds that these requests are not specific objections but are Dye's suggested solutions to the argued errors of the R&R.

{¶13} Where a public office asserts that all records have been provided, a requester must provide sufficient evidence that the records exist in order to succeed on a public records claim. *State ex rel. Sultaana v. Mansfield Corr. Inst.*, 2023-Ohio-1177 (Ct. of Cl.). If the public office provides affidavit testimony that no records exist, the requester must provide clear and convincing evidence that the records do exist. *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 2012-Ohio-4246 (Ct. of Cl.).

{¶14} Here, the Special Master correctly determined that Cleveland provided affidavit testimony, for a number of the requests, that all responsive records were provided. Therefore, Dye must prove by clear and convincing evidence that the records do exist. A review of the materials submitted by Dye prior to the R&R and in her objections show that that Special Master did not err in determining that Dye failed to meet this burden because she did not provide any evidence that such records exist. Therefore, Dye's second objection is OVERRULED.

{¶15} Dye's last objection pertains to metadata. Dye argues that while she did on specifically request metadata for Request No. C001779-80724, because she made authenticity concerns for multiple requests, the Special Master erred in not recommending that Cleveland be ordered to produce metadata for emails requested. Dye cites *McCaffrey* in support of her objection; she contends that because the Supreme Court held that metadata is part of an electronic record when requested, Cleveland should be ordered to produce the metadata for these requests.

{¶16} A requester must specify in their request that the records requested include metadata in order for a requester to be entitled to it. *McCaffrey*, ¶ 19-21. Here, the Special Master correctly determined that Dye only specifically requested the metadata in Request No. C001779-80724. Therefore, Dye's third objection is OVERRULED.

{¶17} As to Dye's requests of the Court, because R.C. 2743.75 does not provide an avenue for such requests, and because the Court overruled Dye's objections, the Court DENIES the requests as moot.

IV. Conclusion

{¶18} For the reasons set forth above, the Court OVERRULES Dye's objections and ADOPTS the Special Master's R&R. Therefore, the Court ORDERS:

1) that Cleveland must produce the records listed in the appendix to the R&R within *30 days* of this entry;

2) that Cleveland certify that it has no other records responsive to the corresponding requests after producing the records listed in the appendix to the R&R within *30 days* of this entry;

3) that Cleveland must file and serve a certification that it has taken the above actions with *40 days* of this entry;

4) that Cleveland pay Dye's filing fee and costs;

{¶19} Further, the Court finds that Cleveland unreasonably delayed the production of records requested as discussed herein and in the R&R. The Court DENIES all other relief and any pending motions. The Court assesses costs against Cleveland. The Clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

LISA L. SADLER
Judge