

IN THE COURT OF CLAIMS OF OHIO

WILLIAM E. LANE

Requester

v.

PORTAGE COUNTY SHERIFF'S
OFFICE

Respondent

Case No. 2025-00712PQ

Case No. 2025-00713PQ

Case No. 2025-00714PQ

Special Master Todd Marti

REPORT AND RECOMMENDATION

{¶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 requester's public records request in Case Nos. 2025-00712PQ and 2025-00713PQ; (2) enter judgment for respondent in Case No. 2025-00714PQ; (3) order respondent to pay requester's filing fees, his costs, and all other costs in Case Nos. 2025-00712PQ and 2025-00713PQ; (4) order requester to pay the costs of Case No. 2025-00714PQ; and (4) deny all other relief.

II. Background.

{¶2} *Case No. 2025-00712PQ.* On April 4, 2025, requester Willam Lane requested copies of all search warrants the respondent Portage County Sheriff's Office ("Sheriff") executed from January of 2021 through the date of the request. The Sheriff initially objected that the request was overbroad, but Mr. Lane pushed back, and the Sheriff investigated the matter. No records or definitive response to the request had been provided when this case was filed on August 1, 2025. The Sheriff finally responded to this request on the merits on September 10, 2025, when it stated that it did not possess the warrants. Mr. Lane's complaint seeks production of the warrants and asserts that the Sheriff unreasonably delayed its response to his request. *Complaint*, in Case No. 2025-00712PQ, filed August 1, 2025; *Motion to Dismiss*, filed September 10, 2025.

{¶3} *Case No. 2025-00713PQ*. On July 3, 2025, Mr. Lane requested that the Sheriff provide copies of the personnel files of three of the Sheriff's employees. Mr. Lane seeks an order compelling production of the files and a declaration that the Sheriff unreasonably delayed his response to this record request. The files were eventually produced on September 24, 2025. *Complaint*, in Case No. 2025-00713PQ, filed August 1, 2025; *Notice*, filed September 24, 2025.

{¶4} *Case No. 2025-00714PQ*. On July 8, 2025, Mr. Lane requested copies of the time records of one of the Sheriff's employees. Those records had apparently not been provided by the time Mr. Lane signed his complaint on July 29, 2025. The Sheriff has provided evidence that the records were made available that evening. Mr. Lane sought to compel production of those records and a declaration that the Sheriff unreasonably delayed his response to his records request. *Complaint*, in Case No. 2025-00714PQ, filed August 1, 2025; *Motion to Dismiss*, filed September 16, 2025 in Case No. 2025-00714PQ.

{¶5} These cases were consolidated pursuant to Civ. R. 42, and a schedule was set, and then amended, for the parties to file evidence and memoranda supporting their positions. That schedule has run its course, making these cases ripe for decision. *Order Consolidating Cases and Bypassing Mediation*, entered August 14, 2025; *Order*, entered September 11, 2025.

II. Analysis.

A. The court should deny requester's production claim in Case No. 2025-00712PQ, but find that respondent unreasonably delayed its response to the records request prompting the case.

{¶6} *Motion to dismiss*. The Sheriff moves to dismiss this case pursuant to Civ. R. 12(B)(1) and (6).

{¶7} The Sheriff argues that the court lacks jurisdiction over the claim because the warrants at issue are Supp. R. 45 court records, rather than R. C. 149.43 public records, and that the court lacks jurisdiction over claims for court records. That overlooks the possibility that the warrants could be both court records and R.C. 149.43 public records. A record that would be a court record in the possession of a court is also a public record if a non-court public office possesses a copy. *AIY Properties, Inc. v. City of Cleveland*,

2025-Ohio-737, ¶ 4, adopted 2025-Ohio-1294 (Ct. of Cl.). Mr. Lane's complaint alleges that the Sheriff has copies of the warrants it served. That allegation would make them public records if true, and that is sufficient to give the court jurisdiction over the claim. *Id.*

{¶8} Dismissal would not be proper under Civ. R. 12(B)(6) because that prong of the Sheriff's motion relies on matters beyond the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992).

{¶9} I therefore recommend that the court DENY respondent's motion to dismiss Case No. 2025-00712PQ and decide the case on the merits.

{¶10} *Production claim.* The Sheriff argues that Mr. Lane cannot show that the Sheriff actually has the warrants he seeks. The Sheriff asserts, without supporting evidence, that it does not have the warrants. Mr. Lane therefore had the burden of coming forward with some evidence that the Sheriff does indeed possess the warrants. *Sell v. Trumbull Cty. Juv. Div.*, 2024-Ohio-6139, ¶ 6 (Ct. of Cl.). Mr. Lane has provided no evidence.

{¶11} I therefore recommend that the court deny relief on Mr. Lane's claim for production of records.

{¶12} *Delay claim.* R.C. 149.43(B)(1) requires a public office to respond to a public records request within a reasonable period of time. That includes the obligation to inform the requester that it does not have the requested records within that time. For example, *State ex rel. Cordell v. Paden*, 2019-Ohio-1216, held that a public office unreasonably delayed its response when it waited three months to inform the requester that it did not have the records she sought because they were kept by a different office and only did so after she filed suit. *Id.* at ¶¶ 3, 5, 13.

{¶13} That precedent establishes that the Sheriff unreasonably delayed its response to Mr. Lane's request for warrants. Mr. Lane made that request on April 4, 2025. The Sheriff did not clearly inform Mr. Lane that it did not have the warrants until five months later, when its September 10, 2025, motion to dismiss finally explained that the warrants were kept by a different office. As in *Cordell*, months passed, and suit was filed, before the office disclosed what should have been an easily discovered and communicated fact.

{¶14} I therefore recommend that the court find that the Sheriff unreasonably delayed its response to the records request underlying Case No. 2025-00712PQ.

B. The court should find requester’s production claim in Case No. 2025-00713PQ to be moot, but find that respondent unreasonably delayed its response to requester’s public records request.

{¶15} *Motion for status conference.* The Sheriff filed a motion for a status conference in this case to discuss whether the case is barred by Mr. Lane’s alleged failure to properly serve a draft of his complaint before he actually filed it, as required by R.C. 149.43(C)(1). That motion appears to have been filed instead of a response to the complaint/motion to dismiss. *Motion for Status Conference*, filed September 16, 2025 in Case No. 2025-00713PQ.

{¶16} A deadline was set for the Sheriff to make whatever response to complaint he deemed appropriate. That deadline was set for a reason—to keep this case moving towards an expeditious and economical resolution by getting all the parties’ arguments before the court for a single, prompt, decision. See R.C. 2743.75(A). The relief sought in the Sheriff’s motion would undermine that by effectively requiring an additional round of evidence, briefing, and decision, a round that would occur after the deadlines set by the controlling scheduling orders.

{¶17} I therefore recommend that respondent’s motions for status conferences in Case No. 2025-00713PQ be DENIED.

{¶18} *Production claim.* “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 case 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. The Sheriff has asserted that it produced the records responsive to this request on September 24, 2025. *Notice*, filed September 24, 2025. Mr. Lane has not disputed that.

{¶19} I therefore recommend that the court find that Mr. Lane’s production claim in case No. 2025-00713PQ is moot.

{¶20} *Delay claim.* 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. Multiple aspects of this case establish that the Sheriff’s delay in responding to the request underlying Case No. 2025-00713PQ violated R.C. 149.43(B)(1).

{¶21} First, the delay here is longer than delays found unreasonable in similar cases. Although each delay claim turns on its own facts, some guidance is provided by similar cases. The delay at issue was 57 working days, from July 3 to September 25, 2025. That is longer than the delays found to be unreasonable in other cases. *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.) (Surveying cases). While not conclusive, that suggests that the delay involved here was unreasonable.

{¶22} Second, the request involved limited review/redaction issues. More time is allowed if the volume or nature of responsive records will make legal review and redaction 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 v. Ohio Dept. of Education*, 2016-Ohio-8534, ¶ 8 (10th Dist.); *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. The request at issue here was limited, seeking only one type of record. Qualitatively, the review/redaction issues were straight forward. It should not have taken the Sheriff multiple months to determine what redactions were needed.

{¶23} Third, the production only occurred after litigation commenced. Courts are more likely to find delayed production unreasonable if it occurs after litigation commenced. *Miller*, 2016-Ohio-8534, ¶ 8; *Ware*, 2022-Ohio-3562, ¶ 19; *State ex rel. Schumann v. City of Cleveland*, 8th Dist. Cuyahoga No. 109776, 2020-Ohio-4920, ¶ 9.

That makes sense; it is difficult to justify a delay that requires the requester on one hand, and the courts, the public office, and its counsel (and the taxpayers who fund them) on the other, to expend time and money on an avoidable controversy. That is what we have here.

{¶24} 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; *Clark-Shawnee, State ex rel. Clark-Shawnee Local School Dist. Bd. of Edn. v. City of Springfield*, 2024-Ohio-2483, ¶ 26. (2d Dist.).

{¶25} Fifth, the Sheriff disregarded production deadlines set in two court orders. *Order Consolidating Cases and Bypassing Mediation*, entered August 14, 2025; *Order*, entered September 11, 2025.

{¶26} I therefore recommend that the court find that the Sheriff unreasonably delayed its response to the public records request underlying Case No. 2025-00713PQ.

C. The court should enter judgment on the merits for respondent in Case No. 2025-00714PQ.

{¶27} *Motion to dismiss*. Respondent seeks dismissal of this case because it asserts that Mr. Lane did not comply with R.C. 149.43(C)(1)'s requirement that he serve a draft of his complaint on the respondent at least three working days before filing it with the court. *Motion to Dismiss*, filed July 16, 2025 in Case No. 2025-00714PQ at pp. 3-4.¹ That motion should be denied for want of proof.

{¶28} Mr. Lane affirmed that he did comply with that requirement. *Complaint* in Case No. 2025-00714PQ, at p. 1. R.C. 3.20 provides that an "affirmation has the same effect as an oath," giving Mr. Lane's affirmation the weight of an affidavit. The Sheriff offered nothing beyond his unsworn memorandum in support of his assertion that Mr. Lane did not comply with R.C. 149.43(C)(1). Unsworn memoranda are not evidence. *Meadows v. Freedom Banc, Inc.*, 2005-Ohio-1446, ¶ 20 (10th Dist.). Consequently, the

¹ All references to the specific pages of filings in this case are to the pages of the PDF copies posted on the court's docket.

only evidence before the court regarding Mr. Lane's compliance with R.C. 149.43(C)(1) is that he did in fact comply with that statute.

{¶29} I therefore recommend that the court DENY the Sheriff's motion to dismiss this case and decide the case on the merits.

{¶30} *Production claim.* Mr. Lane requested copies of records reflecting when one of the Sheriff's employees worked. The Sheriff asserts that it produced all responsive records and supported that assertion with non-sworn evidence. *Motion to Dismiss*, in Case No. 2025-00714PQ at pp. 6-11. Mr. Lane therefore had the burden of coming forward with some evidence that additional responsive records exist. *Sell*, 2024-Ohio-6139, ¶ 6. He has not done so. His claim is consequently moot.

{¶31} That is not changed by Mr. Lane's assertion that he requested records showing the number of hours the employee was *supposed* to have worked and that no such records were provided. A review of his records request reveals that he did not ask for those records, but only records that showed how many hours that employee *did* work. *Motion to Dismiss*, in Case No. 2025-00714PQ at pp. 6-7; *Complaint* in Case No. 2025-00714PQ, p. 2.

{¶32} I therefore recommend that the court find that Mr. Lane's production claim in Case No. 2025-00714 PQ is moot.

{¶33} *Delay claim.* Mr. Lane requested these records on July 8, 2025 and they were made available on July 29, 2025, 15 working days later. That is not an unreasonable response time.

D. Respondent should be ordered to pay the filing fees and costs of Case Nos. 2025-00712PQ and 2025-00713PQ, but requester should pay the costs of Case No. 2025-00714PQ.

{¶34} 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 the records requests underlying Case Nos. 2025-00712PQ and 2025-00713PQ. I therefore recommend that he recover his filing fees and the costs he incurred

in those cases. I also recommend that the Sheriff bear the balance of the costs of those cases.

{¶35} Costs should be assessed against Mr. Lane in Case No. 2025-00714PQ pursuant to R.C. 2743.09(F) and R.C. 2303.20 because he implicitly agreed to pay those costs by filing that case. *Helfrich v. Hall*, 2022-Ohio-1852, ¶ 25 (5th Dist.).

III. Conclusion.

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

- (A) Find that respondent unreasonably delayed its responses to requester's public records requests in Case Nos. 2025-00712PQ and 2025-00713PQ;
- (B) Order respondent to pay requester's filing fee, his costs, and all other costs in Case Nos. 2025-00712PQ and 2025-00713PQ;
- (C) Order requester to pay the costs of Case No. 2025-00714PQ; and
- (D) Deny all other relief.

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).

TODD MARTI
Special Master