

IN THE COURT OF CLAIMS OF OHIO

DALE SEIM

Requester

v.

PERRY TOWNSHIP

Respondent

Case No. 2025-00722PQ

Special Master Sarah Pierce

REPORT AND RECOMMENDATION

{¶1} This matter is before me for a report and recommendation. R.C. 2743.75(F). I recommend that the Court (1) deny as moot respondent’s motion to dismiss, (2) order respondent to provide reasonable access to certain records, as described below, (3) order respondent to pay requester’s filing fee, and (4) order respondent to pay the balance of costs of this case.

I. Background

A. The public records request

{¶2} Requester Dale Seim filed a R.C. 2743.45 complaint against Respondent Perry Township. *Complaint, filed Aug. 6, 2025*. Mr. Seim’s complaint alleges that he made six public records requests to the Township that were not appropriately answered.

{¶3} Request 1 (Cemetery Records): This request was sent by email on April 12, 2021. *Compl.*, p. 4. The request “ask[ed] for the income from each Perry Township cemetery and the expenses for each Perry Township cemetery from 1-01-2010 to 12-31-2020[.]” *Compl.*, p. 4. This request was acknowledged by the Township. *Compl.*, p. 5.

{¶4} On October 29, 2025, the Township provided Mr. Seim with responsive records for the available years (2020 through 2025). *Resp. Evidence, filed Dec. 29, 2025*, p. 1-72, 121.

{¶5} Request 2 (ATV Court Order): This request was sent by email on January 2, 2024. *Compl.*, p. 9. The request asked for “a copy of the order signed by a judge approving

[the] dispersal and or distruction of the ATV (4wheeler) that was stored in the Perry Township Maintenance garage for a number of years.” *Compl.*, p. 9. The Township responded to ask for more details about the ATV to facilitate a records search. *Compl.*, p. 6-7. Mr. Seim sent additional details on February 8, 2024. *Compl.*, p. 6.

{¶6} On November 19, 2025, the Township informed Mr. Seim that it contacted the Montgomery County Municipal Court for any responsive orders. The court conducted a search and did not locate an order. *Resp. Ev.*, p. 126; *see also Resp. MTD*, p. 7.

{¶7} Request 3 (ATV Destruction Receipt): Mr. Seim made this request verbally at a public meeting on July 11, 2023. *Compl.*, p. 10. The request asked, “for the receipt of the destruction of the ATV from the maintenance building.” *Compl.*, p. 10.

{¶8} Emails filed by the Township document the search for responsive records. *Resp. Ev.*, p. 79-84. It appears neither the Township’s fiscal officer nor police department were able to locate any responsive records. *Id.* The Township responded to Mr. Seim on September 12, 2023, stating that there were no responsive records. *Compl.*, p. 10; *Resp. Ev.*, p. 78.

{¶9} Mr. Seim sent a similar request by email on September 14, 2023. *Compl.*, p. 11. That request asked for “a copy of the Perry Township UAN entry for the money received for the destroyed 4 wheeler ATV when it was entered into the system and a copy of the bank deposit slip when money was taken to the bank.” *Compl.*, p. 11.

{¶10} Request 4 (Property Records): This request was submitted via an online form on July 16, 2024. *Compl.*, p. 12-13. The request asked for “all information pertaining to the property on southwest corner of Crawford Tom’s run road and Little Richmond road[.]” *Compl.*, p. 12. The Township emailed Mr. Seim back to request more information. *Compl.*, p. 13. Mr. Seim clarified on July 17, 2024, that he was requesting “[a]ny lot splits, zoning request, BZA hearings, any type of zoning request or permits, building

permits, maps, plot plans or surveys presented by owners[.]” *Compl.*, p. 14. Mr. Seim alleges that he was verbally informed by the Township that it had no information regarding this property. *Compl.*, p. 24.

{¶11} The Township provided Mr. Seim with available notes made by the Township zoning administrator on October 29, 2025. *Resp. Ev.*, p. 85-87, 120; *Resp. MTD*, p. 8. The Township also provided affidavit evidence to demonstrate that no other responsive records exist. *Resp. Ev.*, p. 122-124, 120-124.

{¶12} Request 5 (Police Records): In April 2025, Mr. Seim requested “the details, including dates, of the last 10 burglaries and car thefts [in the Township].” *Compl.*, p. 26. Mr. Seim also made a general request for information, asking “How many murders, assaults, robberies, OVIs, and total traffic stops were in Perry Township in 2023 and 2024?” *Compl.*, p. 26.

{¶13} On June 26, 2025, the Township responded that it did not maintain a responsive record. *Compl.*, p. 28; *Resp. Ev.*, p. 89; *see also Resp. MTD*, p. 8.

{¶14} The Township compiled this information for Mr. Seim and provided it on October 29, 2025. *Resp. Ev.*, p. 92-118, 121.

{¶15} Request 6 (Zoning Case Files): In May 2025, Mr. Seim verbally submitted this request to inspect “zoning case files[.]” *Compl.*, p. 2, 30. The Township informed him that they have no such files. *Compl.*, p. 2, 30.

B. Procedural history

{¶16} This matter was referred to mediation. Mediation did not resolve the case, and a schedule was set for both parties to file evidence and memoranda supporting their positions. That schedule has run its course, making this case ripe for decision. *Order Terminating Mediation, entered December 10, 2025.*

II. Analysis

A. Respondent's motion to dismiss should be denied as moot and addressed as a response to the complaint.

{¶17} The Township filed a Civil Rule 12(B)(6) motion to dismiss for failure to state a claim. That motion, however, explicitly relies upon evidence outside of the complaint and urges dismissal based on mootness. Therefore, the Township's motion should be considered a response to the complaint and denied as moot. *Hicks v. Village of Newtown*, 2018-Ohio-1540, ¶ 13 (Ct. of Cl.). The substance of the motion is addressed below as a response to the complaint.

B. Requests 1 through 5: Respondent did not provide records in a reasonable amount of time.

{¶18} *Production claim.* During this case, the Township provided records and other information to Mr. Seim in response to Requests 1 through 5. Mr. Seim does not present any evidence or argument that further responsive records exist. *See Req. Reply, filed Jan. 13, 2026*, p. 1-3. Providing requested records generally renders a public-records claim moot. *State ex rel. Cincinnati Enquirer v. Dupuis*, 2002-Ohio-7041, ¶ 8; *Kearns v. Boardman Twp. Police Dept.*, 2025-Ohio-475, ¶ 7 (public records claim mooted when records provided during litigation), adopted Ct. of Cl. No. 2024-00776PQ (Mar. 19, 2025). Mr. Seim does not present evidence to indicate that any further responsive records exist. Mr. Seim is therefore not entitled to further production of records for these requests. *See Dye v. City of Cleveland*, 2025-Ohio-4330, ¶ 13 (Ct. of Cl.) (noting a requester "must provide sufficient evidence that the records exist" if "a public office asserts that all records have been provided").

{¶19} *Delay claim.* Mr. Seim does argue, however, that the Township failed to produce these records within a reasonable time. The "primary duty" of a public office is to provide a public records requester with any responsive records within a reasonable amount of time. *State ex rel. Cordell v. Paden*, 2019-Ohio-1216, ¶ 11. Whether a public office has provided records within a reasonable time depends upon all the pertinent facts and circumstances of the case. *Id.*, ¶ 12. The requester bears the burden of demonstrating that a public office's response was unreasonably delayed. *Id.*; *Diebert v. Lafferty*, 2022-Ohio-2919, ¶ 28 (same), adopted 2022-Ohio-3052 (Ct. of Cl.).

{¶20} Generally, public offices are allowed more time to respond to requests that involve large volumes of records or intensive legal review and redaction. See *State ex rel. Shaughnessy v. City of Cleveland*, 2016-Ohio-8447, ¶ 14, 17 (24 business days reasonable); *Easton Telecom Servs., L.L.C. v. Village of Woodmere*, 2019-Ohio-3282, ¶ 46-49 (8th Dist.) (two months reasonable); *Miller v. Ohio Dept. of Education*, 2016-Ohio-8534, ¶ 8 (10th Dist.) (61 days unreasonable); *State ex rel. Ware v. Bur. of Sentence Computation*, 2022-Ohio-3562, ¶ 19 (10th Dist.) (16 months unreasonable).

{¶21} Request 1 was made on April 12, 2021. *Compl.*, p. 4. The Township provided responsive records on October 29, 2025. *Resp. Ev.*, p. 1-72, 121. It appears that the Township's response to Request 1 took over four years. The Township does not provide any evidence to explain this delay. On its face, this response time is not reasonable.

{¶22} Request 2 was sent on January 2, 2024, and clarified on February 8, 2024. *Compl.*, p. 6, 9. There is no evidence that a response to this request was provided to Mr. Seim until after this case was filed. *Resp. Ev.*, p. 126; see also *Resp. MTD*, p. 7. It therefore appears that it took well over a year for Mr. Seim to receive a final answer to this request. On its face, this response time is not reasonable.

{¶23} Request 3 was made verbally on July 11, 2023. *Compl.*, p. 10. The Township replied that there were no responsive records on September 12, 2023. *Compl.*, p. 10; *Resp. Ev.*, p. 78. It appears that the Township's fiscal officer made diligent efforts to locate responsive records in July and August 2023. *Resp. Ev.*, p. 79-84. Mr. Seim submitted a similar request on September 14, 2023, which it appears has not been answered. *Compl.*, p. 11. There is no explanation regarding the non-response to Mr. Seim's September 14 request. This is not a reasonable response time.

{¶24} Request 4 was made on July 16, 2024. *Compl.*, p. 12-13. Mr. Seim alleges that he was told that there were no responsive records, but he does not specify when this occurred. *Compl.*, p. 24. After this litigation began, the Township provided Mr. Seim with some additional information about this request. *Resp. MTD*, p. 7-8; *Resp. Ev.*, p. 85-88, 120-124. This additional information supports the Township's original position that no responsive records exist—Mr. Seim's request asked for zoning requests, applications, etc. regarding a particular lot, and the Township did not retain any. Because Mr. Seim did not present evidence regarding the original response date, I cannot evaluate whether the

response time was unreasonable. Mr. Seim is therefore not entitled to relief regarding this request.

{¶25} Request 5 was made in April 2025. *Compl.*, p. 26. The Township sent a final response, indicating no responsive records, on June 26, 2025, approximately 70 days later. *Compl.*, p. 28; *Resp. Ev.*, p. 89; *see also Resp. MTD*, p. 8. The Township provides no explanation for this delay. This response time is not reasonable.

{¶26} *Summary.* I find that the Township violated R.C. 149.43(B) with respect to Mr. Seim's Requests 1, 2, 3, and 5. The Township did not provide a response to these requests in a reasonable amount of time.

C. Request 6: Respondent improperly denied access to records responsive to Request 6.

{¶27} To compel production of public records through Revised Code 2743.75, a requester must "plead and prove facts" demonstrating a request for "an identifiable public record" and the public office's denial of that request. *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, 2020-Ohio-5371, ¶ 26. "When a public office attests that it does not have responsive records, the [requester] . . . bears the burden of proving by clear and convincing evidence that the requested records exist and are maintained by the public office." *State ex rel. Culgan v. Jefferson Cty. Prosecutor*, 2024-Ohio-4715, ¶ 13. This Court has held the same. *Ackley v. Washington Court House Police Dept.*, 2025-Ohio-2882, ¶ 13-15, adopted 2025-Ohio-4333 (Ct. of Cl.); *Dye v. City of Cleveland*, 2025-Ohio-4330, ¶ 13 (Ct. of Cl.).

{¶28} Mr. Seim contends that the Township has not provided access to records responsive to Request 6. In that request, Mr. Seim asked to inspect "zoning case files[.]" *Compl.*, p. 2, 30. The Township informed him that they have no such files. *Compl.*, p. 2, 30. Mr. Seim contests this position. He submits signed and notarized statements from other Perry Township residents to demonstrate that such records exist. *Req. Ev., filed Dec. 30, 2025*, p. 3-4.¹ Townships have zoning authority delegated by statute. See

¹ Mr. Seim filed this evidence one day past the December 29, 2025, deadline I set in the Order Terminating Mediation. Because this one-day delay does not prejudice the Township and supports resolution of this case on the merits, I consider it in this Report and Recommendation.

generally R.C. Chap. 519; *Apple Group, Ltd. v. Granger Twp. Bd. of Zoning Appeals*, 2015-Ohio-2343, ¶¶ 6-7. Perry Township has adopted a zoning plan and has a zoning administrator, zoning commission, and board of zoning appeals. See *Resp. Ev.*, p. 123 ¶¶ 3-4. It appears that records exist which are reasonably responsive to Mr. Seim's request. See *State ex rel. Morgan v. City of New Lexington*, 2006-Ohio-6365, ¶ 37 (law does "not require perfection in public-records requests"); *Rose v. Ohio Dept. of Commerce*, 2023-Ohio-1488, ¶ 26, adopted 2023-Ohio-1856 (Ct. of Cl.) (requester not required to use public office's preferred terminology).

{¶29} The Township does not provide any evidence to rebut this position. Indeed, it appears that the Township agrees that the records exist but contends that Mr. Seim's request to inspect these records was overbroad. *Resp. MTD*, p. 8. That may be. Still, there is no indication that the Township denied Mr. Seim's request on this basis and permitted him an opportunity to revise. This lack of response is also a violation of the Ohio Public Records Act. R.C. 149.43(B)(2); *State ex rel. Bott Law Group, L.L.C. v. Ohio Dept. of Natural Resources*, 2013-Ohio-5219, ¶¶ 38-39 (10th Dist.).

{¶30} Mr. Seim has sufficiently demonstrated that the requested records exist. See *Sell v. Trumbull Cty. Juv. Div.*, 2024-Ohio-6139, ¶ 6 (Ct. of Cl.) (noting "some evidence" of the existence of records may be sufficient). Mr. Seim should be permitted to inspect the records. The parties should work together to ensure a reasonable inspection time and protection of the records. *State ex rel. Davila v. Bellefontaine*, 2011-Ohio-4890, ¶¶ 39, 44 (3d Dist.). I therefore recommend the Court order the Township to permit Mr. Seim reasonable inspection of records in response to Request 6.

D. Costs.

{¶31} Revised Code 2743.75(F)(3)(b) provides that the Court shall award a requester their filing fee and "any other costs associated with the action" if it finds a violation of the Ohio Public Records Act. Because I find a violation of the Ohio Public Records Act, I recommend the Court order the Township to provide Mr. Seim his filing fee and to bear the costs of this action.

III. Conclusion

{¶32} Based on the above considerations, I recommend that the court:

- 1) Deny as moot respondent's motion to dismiss;

2) Order respondent to provide reasonable access to records responsive to requester's May 2025 verbal public records request to inspect respondent's "zoning case files" (referred to as Request 6 in this report and recommendation);

3) Order respondent to pay requester's filing fee; and

4) Order respondent to pay the balance of costs of this case.

{¶133} 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).

SARAH PIERCE
Special Master

Filed January 27, 2026
Sent to S.C. Reporter 2/13/26