

IN THE COURT OF CLAIMS OF OHIO

HERBERT J. MORRIS

Requester

v.

CITY OF CLEVELAND

Respondent

Case No. 2025-00959PQ

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) enter judgment for respondent, (2) order requester to bear the balance of costs in this case, and (3) deny any other relief.

**I. Background**

**A. The public records request**

{¶2} On October 8, 2025, Requester Herbert J. Morris made a public records request to Respondent the City of Cleveland. *Complaint, filed Nov. 21, 2025*, p. 1; *Resp. Evidence, filed Jan. 26, 2026*, p. 6 ¶ 3. The request asked for:

All records of communication between Chief Prosecutor [Aqueelah] Jordan or any other official or employee of the Criminal Division of the City of Cleveland Law Department and any other individual or entity regarding, mentioning, or otherwise referring to Mr. Herbert Mr. Morris from January 1, 2024 to May 31, 2025. This request includes, but is not limited to, any such communications sent or received by Mr. Scott Hubay, Managing Partner of the law firm Hubay Dougherty. For purposes of clarification, Mr. Mr. Morris is a resident of Dayton, Ohio and was recently the subject of a criminal complaint filed in Cleveland Municipal Court (ref. 2024-CRB-006334) which was dismissed on May 1, 2025.

*Compl.*, p. 3; *Resp. Ev.*, p. 8.

{¶3} When this case was filed on November 21, 2025, Mr. Morris alleged that the City had provided no response to his request. *Compl.*, p. 2. On January 4, 2026, the City provided responsive records to Mr. Morris with redactions. *Req. Evidence, filed Jan. 22, 2026*, p. 1; *Resp. Ev.*, p. 6 ¶ 3, p. 7 ¶ 17.

### **B. Procedural history**

{¶4} 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 Jan. 9, 2026*.

## **II. Analysis**

### **A. Requester is not entitled to further production of records.**

{¶5} The City completed a search for records and provided all responsive records to Mr. Morris. *Resp. Ev.*, p. 6 ¶ 4-10. 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. Morris does not present evidence to indicate that any further responsive records exist. Mr. Morris 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”).

### **B. The City properly redacted the responsive public records.**

{¶6} If records are withheld from release based on a public records exception, the public office must “prove facts clearly establishing the applicability of the exception.” *Welsh-Huggins*, 2020-Ohio-5371, ¶ 27, 35. The public office “does not meet [its] burden if it has not proven that the requested records fall squarely within the exception,” and courts “resolve any doubt in favor of disclosure.” *Id.* at ¶ 27, 63. The public office must produce extrinsic evidence if the applicability of the exception is “not obviously apparent and manifest just from the content of the record itself[.]” *Id.* at ¶ 35.

{¶7} The City redacted the responsive records based on three exceptions: attorney work product, attorney-client privilege, and crime victim privacy. Each exception is addressed below.

{¶8} **Attorney work product.** Effective September 30, 2025, the Public Records Act was amended to exclude “attorney work product records” from public records release. R.C. 149.43(A)(1)(zz); see also 2025 Am.Sub.H.B. 96 (amending R.C. 149.43). An “attorney work product record” includes:

a record that is not specific investigatory work product or a trial preparation record and that is created by an attorney, or by the agent of an attorney, in reasonable anticipation of or for litigation, trial, or administrative proceedings, when acting in an official capacity on behalf of the state, a political subdivision of the state, a state agency, a public official, or a public employee, that documents the independent thought processes, mental impressions, legal theories, strategies, analysis, or reasoning of an attorney or the agent of an attorney.

R.C. 149.43(A)(1)(18). To date, this exception has not been applied by a court. The terms of the exception, however, generally follow the contours of the attorney work product doctrine. See *TCE Tall Oaks*, 2025-Ohio-4724, ¶ 27 (11th Dist.) (outlining application of work product doctrine as a qualified privilege in litigation).

{¶9} In this case, this exception would apply to records (1) created by an attorney acting in an official capacity on behalf of the City, (2) in reasonable anticipation of or for a legal proceeding, (3) that document the legal reasoning of the attorney. On review of the unredacted records, I find that the City properly redacted the following records under this exception: CLE00016, -66, -80, -86, -99, 125, -157 through -158, 164, -180 through -181, -199 through -200, -205, -208, -215 through -216, and -223. These records were all sent by a City attorney and relate to preparations for hearings in the same criminal case in October 2024, February 2025, and April 2025. *Resp. Ev.*, p. 7 ¶¶ 11, 14.

{¶10} Some of the redactions made under this exception do not document the “thought processes” etc. of an attorney. See *TCE Tall Oaks* at ¶ 30. These redactions were, however, correctly made under the attorney-client privilege, as detailed below.

*Jones v. Dept. of Youth Serv.*, 2023-Ohio-4441, ¶ 18, adopted in relevant part, ¶ 10 (Ct. of Cl.) (the court has discretion to apply an unasserted exception if in the public interest).

{¶11} **Attorney-client privilege.** The attorney-client privilege is also an exception to the release of public records. R.C. 149.43(A)(1)(v); *State ex rel. Lanham v. DeWine*, 2013-Ohio-199, ¶ 26. The attorney-client privilege applies:

- (1) Where legal advice of any kind is sought
- (2) from a professional legal adviser in his capacity as such,
- (3) the communications relating to that purpose,
- (4) made in confidence
- (5) by the client,
- (6) are at his instance permanently protected
- (7) from disclosure by himself or by the legal adviser,
- (8) unless the protection is waived.

*Id.*, ¶ 27. In other words, the privilege permanently protects communications about legal advice made between a client and their attorney, unless the privilege is waived by the client. The attorney-client privilege includes communications that “facilitate” providing legal advice, such as an attorney’s factual investigation conducted “incident to or related to any legal advice.” *Id.*, ¶ 29-30, quoting *State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Auth.*, 2009-Ohio-1767, ¶ 27-31. “[V]oluntary disclosure of privileged communications to a third party waives a claim of privilege with regard to communications on the same subject matter.” *12312 Mayfield Rd., LLC v. High & Low Little Italy, LLC.*, 2024-Ohio-2717, ¶ 15 (8th Dist.).

{¶12} On review of the unredacted records, I find that the City properly redacted the following records under this exception: CLE000001, -13, -18, -24, -40, -45, -75, -128, -132, -172, and -178. These records are communications pertaining to legal advice sent from City clients to City attorneys. The records marked CLE00001, -13, -18, -24, -40, -45, -172, and -178 pertain to complaints made by Mr. Morris to the City’s Bureau of Internal Audit in February 2025. The record marked CLE00075 pertains to a July 2024 complaint received by the City police division concerning Mr. Morris.

{¶13} As noted above, some of the records redacted under the attorney work product exception are more accurately redacted pursuant to the attorney-client privilege. The records marked CLE-000148 and -152 through -153 pertain to the same request for legal advice contained in CLE00075. The records marked CLE000142 through -143 and CLE000146 through -147 also contain communications related to legal advice. These

communications concern the appropriate response to a message sent by Mr. Morris on November 6, 2024. I therefore find that although the work product exception does not apply to these records as claimed by the City, they were nevertheless correctly redacted pursuant to the attorney-client privilege. *Jones* at ¶ 18.

{¶14} Mr. Morris argues that the crime-fraud exception to the attorney-client privilege waives the protection of that exception. *See Req. Ev., filed Jan. 22, 2026*, p. 8-9. “A party invoking the crime-fraud exception must demonstrate that there is a *factual basis for a showing of probable cause* to believe that a crime or fraud has been committed and that the communications were in furtherance of the crime or fraud.” *State ex rel. Nix v. City of Cleveland*, 83 Ohio St.3d 379, 384 (1998) (emphasis added). Mr. Morris argues that the City colluded with a third party to retaliate against him for reporting criminal activity. *See Req. Ev.*, p. 3-4. After careful review, I find no evidence of this in Mr. Morris’ filings, the City’s evidence, or the unredacted records. I also find no evidence that the City released privileged material to a third party. *See Req. Ev.*, p. 3. I therefore find no waiver of either the attorney work product exception or the attorney-client privilege.

{¶15} **Victim privacy.** The Victim Privacy Law (R.C. 2930.07) mandates the privacy of certain information relating to crime victims. *State ex rel. Gatehouse Media Ohio Holdings II Inc. v. Columbus Police Dept.*, 2025-Ohio-5243, ¶ 13-15. On the request of a crime victim, “case documents . . . shall be redacted prior to public release pursuant to [the Public Records Act] to remove the name, address, or other identifying information of the victim.” R.C. 2930.07(D)(1)(a)(i); *see also* R.C. 149.43(A)(1)(rr). A “case document” includes:

[A] document or information in a document, or audio or video recording of a victim of violating a protection order, an offense of violence, or a sexually oriented offense, regarding a case that is submitted to a court, a law enforcement agency or officer, or a prosecutor or filed with a clerk of court . . . or any documentation [of the same victim], prepared or created by a court, clerk of court, or law enforcement agency or officer, or a prosecutor regarding a case.

R.C. 2930.07(A)(1)(a).

{¶16} The City claims this exception to redact victim information in a police report (CLE000050-53). On review of the unredacted record, I find that the redacted information pertains to a victim of an offense of violence. R.C. 2901.01(9)(a) (defining “offense of violence” to include a violation of R.C. 2921.04). It appears that this violation resulted in a criminal case. See *Compl.*, p. 3 (original public records request concerns Mr. Morris as “subject of a criminal complaint filed in Cleveland Municipal Court”). The record was prepared by a law enforcement agency, the Cleveland Division of Police, regarding that case. See *Resp. Ev.*, p. 61 (CLE000050). I therefore find that the redactions were properly applied pursuant to the Victim Privacy Law. R.C. 149.43(A)(1)(a)(rr) and 2930.07(D)(1)(a)(i).<sup>1</sup>

{¶17} **Summary.** Upon my review of the unredacted records, I find that the City properly redacted the public records provided to Mr. Morris. These findings are summarized in the attached Appendix A. I therefore recommend that the Court order no additional production of unredacted records to Mr. Morris.

### **C. The City produced records in a reasonable amount of time.**

{¶18} Mr. Morris contends that the City failed to produce responsive 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.* at ¶ 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.).

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<sup>1</sup> I note that, by its terms, R.C. 2930.07(D)(1)(a)(i) applies “[o]n written request of the victim or victim’s representative.” There is no evidence of such a request entered in this case. However, I follow the Ohio Supreme Court’s decision in *State ex rel. Gatehouse Media Ohio Holdings* and “will not search the record or formulate legal arguments on behalf of the parties.” (Cleaned up.) 2025-Ohio-5243, ¶ 36; see also *id.* at ¶¶ 103-108 (Fischer, J. concurring in part and dissenting in part). Mr. Morris did not raise this issue in his filings.

{¶19} 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 given steps needed to review records); *Easton Telecom Servs., L.L.C. v. Village of Woodmere*, 2019-Ohio-3282, ¶ 46-49 (8th Dist.) (two months reasonable for review of 1,153 responsive documents); *Miller v. Ohio Dept. of Education*, 2016-Ohio-8534, ¶ 8 (10th Dist.) (61 days unreasonable for limited, readily-available records); *State ex rel. Ware v. Bur. of Sentence Computation*, 2022-Ohio-3562, ¶ 19 (10th Dist.) (16 months unreasonable).

{¶20} In this case, the initial public records request was made on October 8, 2025. *Compl.*, p. 1; *Resp. Ev.*, p. 6 ¶ 3. Responsive records were provided on January 4, 2026, after this case was filed and 89 calendar days (approximately 60 working days) after the public records request was made. *Resp. Ev.*, p. 6 ¶ 3. The City produced 245 pages of responsive records, with redactions throughout. *Resp. Ev.*, p. 12-256. The City's IT department conducted a search for responsive records, spanning a seventeen-month period and involving the entire Criminal Division of the Cleveland Law Department. *Resp. Ev.*, p. 6 ¶¶ 4-7.

{¶21} Mr. Morris argues that the response time, on its face, was unreasonably delayed. *Req. Reply, filed Feb. 5, 2026*, p. 1. The City introduces facts to support its response time. First, the IT department conducted the initial search for records—in other words, the responsive records were not immediately identifiable. See, *contra*, *Miller* at ¶ 8 (requested records were limited and “clearly identified and should not have been difficult to locate, review, and produce”). Mr. Morris' public records request covered an extensive time period and several record holders (at least eight record holders are documented in the responsive records). See *Resp. Ev.*, p. 7 ¶¶ 11-15. A legal review was also necessary to ensure all excepted material was withheld or redacted. *Resp. Ev.*, p. 6 ¶ 8. Redactions occur throughout the entire set of responsive records. See *Easton Telecom Servs.* at ¶ 49 (legal “counsel required time to review, analyze, redact” responsive records). The City's response time pushes the limits of reasonableness, as compared to other cases considered by this Court. See *Dye v. Cleveland*, 2025-Ohio-2375, ¶ 38, adopted 2025-

Ohio-4330 (Ct. of Cl.) (71 working days unreasonable). Still, I find that the specific evidence introduced by the City supports the response time.

{¶22} On this record, I therefore find that the response time was reasonable.

**D. No additional relief.**

{¶23} Mr. Morris also argues for a variety of relief throughout his filings in this case. See *Req. Reply*, p. 2. This court is limited, however, in the relief it can provide in a R.C. 2743.75 public records case. Nothing in R.C. 2743.75(F)(3) authorizes this Court to grant relief beyond ordering the production of specific records in response to specific requests. Further, the statute does not permit recovery of statutory damages. *Doe v. Ohio State Univ.*, 2024-Ohio-5897, ¶ 53 (10th Dist.). Any further relief requested by Mr. Morris should therefore be denied.

**E. Costs.**

{¶24} 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 no violation, I recommend that the Court assess Mr. Morris the balance of costs in this case.

**III. Conclusion**

Based on the above considerations, I recommend that the court:

- 1) Enter judgment for respondent;
- 2) Order requester to bear the balance of costs in this case;
- 3) Deny any other relief.

{¶25} *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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SARAH PIERCE  
Special Master

**Filed February 17, 2026**  
**Sent to S.C. Reporter 3/19/26**

**APPENDIX A**

<b>Page Number</b>	<b>Appropriate Exception</b>
CLE000001	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000013	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000016	Work product, R.C. 149.43(A)(1)(zz)
CLE000018	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000024	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000040	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000045	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000050-053	Victim privacy, R.C. 149.43(A)(1)(rr)
CLE000066	Work product, R.C. 149.43(A)(1)(zz)
CLE000075	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000080	Work product, R.C. 149.43(A)(1)(zz)
CLE000086	Work product, R.C. 149.43(A)(1)(zz)
CLE000099	Work product, R.C. 149.43(A)(1)(zz)
CLE000125	Work product, R.C. 149.43(A)(1)(zz)
CLE000128	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000132	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000142-143	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000146-147	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000148	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000152-153	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000157-158	Work product, R.C. 149.43(A)(1)(zz)
CLE000164	Work product, R.C. 149.43(A)(1)(zz)
CLE000172	Attorney-client privilege, R.C. 149.43(A)(1)(v)
CLE000178	Attorney-client privilege, R.C. 149.43(A)(1)(v)

CLE000180-181	Work product, R.C. 149.43(A)(1)(zz)
CLE000199-200	Work product, R.C. 149.43(A)(1)(zz)
CLE000205	Work product, R.C. 149.43(A)(1)(zz)
CLE000208	Work product, R.C. 149.43(A)(1)(zz)
CLE000215-216	Work product, R.C. 149.43(A)(1)(zz)
CLE000223	Work product, R.C. 149.43(A)(1)(zz)