

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE, EX REL.,	:	JUDGES:
BETH ROCKER	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. W. Scott Gwin, J.
Relator	:	Hon. Patricia A Delaney, J.
	:	
-vs-	:	
	:	
GUERNSEY COUNTY	:	Case No. 09-CA-4
SHERIFF'S OFFICE	:	
	:	
Respondent	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Complaint for Writ of Mandamus

JUDGMENT: Writ Denied

DATE OF JUDGMENT ENTRY: December 2, 2009

APPEARANCES:

For Relator

KONRAD KIRCHER
4824 Socialville-Foster Road
Suite 110
Mason, OH 45040

For Respondent

DANIEL G. PADDEN
Prosecuting Attorney
139 West 8th Street
P.O. Box 640
Cambridge, OH 43725

Farmer, P.J.

{¶1} Relator, Beth Rocker, has filed a Petition for Writ of Mandamus requesting Respondent, the Guernsey County Sheriff's Office, be compelled to release certain records which were requested pursuant to a public records request.

{¶2} "Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio's Public Records Act." *State ex rel. Physicians Commt. for Responsible Medicine v. Ohio State Univ. Bd. of Trustees*, 108 Ohio St.3d 288, 2006-Ohio-903, 843 N.E.2d 174, ¶6; R.C. 149.43(C). The Public Records Act implements the state's policy that "open government serves the public interest and our democratic system." *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472, ¶20. "Consistent with this policy, we construe R.C. 149.43 liberally in favor of broad access and resolve any doubt in favor of disclosure of public records." *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶13." *State ex rel. Perrea v. Cincinnati Pub. Schools*, 2009 WL 2973196, 2 (Ohio, 2009).

{¶3} On October 1, 2008, Relator issued a public records request for the "entire contents of the investigative file and any documents reviewed during or related to the investigation". The investigation referenced in the request was based upon a criminal complaint made by a Relator. The matter was submitted to a grand jury who returned a no bill. In response to the request, Respondent provided certain items to Relator, however, other items were withheld based upon Respondent's determination the records were exempt from disclosure.

{¶4} "Exceptions to disclosure under the Public Records Act, R.C. 149.43, are strictly construed against the public-records custodian, and the custodian has the

burden to establish the applicability of an exception. A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception." *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, paragraph two of the syllabus." *State ex rel. Perrea v. Cincinnati Pub. Schools*, 2009 WL 2973196, 3 (Ohio,2009).

{¶5} Pursuant to our order, Respondent provided this Court under seal all records which have not been turned over to Relator. The parties have filed briefs in support of their positions relative to the categories of documents which have been withheld. There are thirteen items which have not been disclosed to Relator. The parties agree three of those documents are not subject to disclosure, therefore, this Court will only address the remaining ten items in dispute which are: (1) The Sheriff's Call Record, (2) Investigator Notes, (3) Witness Statements, (4) Statement from Uncharged Suspect's Employer, (5) Complainant's Statement, (6) Complainant's Affidavit, (7) Correspondence between the Sheriff and the Prosecutor, (8) Correspondence between the Prosecutor and the Attorney for the Uncharged Suspect's Employer, (9) Correspondence between the Sheriff and an Advocacy Group, and (10) Psychological Reports of Uncharged Suspect.

{¶6} Respondent urges this Court to find the records which have not been disclosed are exempt as confidential law enforcement records the release of which would create a high probability of disclosure of the identity of an uncharged suspect.

{¶7} R.C. 149.43 governs the disclosure of public records. "R.C. 149.43(A)(1)(h) excepts '[c]onfidential law enforcement investigatory records' from the definition of '[p]ublic record' for purposes of the Public Records Act. R.C. 149.43(A)(2)

defines '[c]onfidential law enforcement investigatory record' as 'any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of' any of the types of information set forth in subsection a, b, c, and d." *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 461-462, 835 N.E.2d 1243, 1247 (Ohio,2005). Sections (a),(b),(c), and (d) provide as follows:

{¶8} (a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

{¶9} (b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

{¶10} (c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

{¶11} (d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

{¶12} The Supreme Court has employed a two step test to determine whether records should be exempt from release under this section, "[W]e employ a two-step test to determine whether a record is exempt as a confidential law-enforcement record under R.C. 149.43:

{¶13} 'First, is the record a confidential law enforcement record? Second, would release of the record "create a high probability of disclosure" of any one of the four kinds of information specified in R.C. 149.43(A)(2)?' *State ex rel. Beacon Journal*

Publishing Co. v. Maurer (2001), 91 Ohio St.3d 54, 56, 741 N.E.2d 511, quoting *State ex rel. Polovischak v. Mayfield* (1990), 50 Ohio St.3d 51, 52, 552 N.E.2d 635." *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 462, 835 N.E.2d 1243, 1247 (Ohio,2005).

{¶14} We note "[t]he uncharged-suspect exemption may still apply even though the accusation of criminal conduct is already public knowledge. *State ex rel. Master v. Cleveland* (1996), 76 Ohio St.3d 340, 342, 667 N.E.2d 974, 975-976." *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 446-447, 732 N.E.2d 969, 976 (Ohio,2000).

{¶15} The first step of the test outlined supra requires us to determine whether the records sought to be exempted are confidential law enforcement investigatory records. Having reviewed the records under seal, we find the Sheriff's Call Record, Investigator Notes, Witness Statements, Statement from Uncharged Suspect's Employer, Complainant's Statement, Complainant's Affidavit, Suspect's Psychological Report, and all Correspondence to be Confidential Law Enforcement Investigatory Records. Each of these items is a record pertaining to a law enforcement matter which is criminal in nature.

{¶16} Next, we must determine whether the records create a high probability of disclosure of the uncharged suspect's identity pursuant to R.C. 149.43(A)(2)(a). Each of these records will undoubtedly reveal the identity of the uncharged suspect. Not only do most of the records reveal the name of the suspect, they also reveal facts unique to him which would have a high probability of revealing his identity. For this reason, we find all of the records provided by Respondent to be exempt.

{¶17} Because none of the records is subject to disclosure, Relator's Complaint for Writ of Mandamus is denied.

{¶18} COMPLAINT DENIED.

{¶19} COSTS TO RELATOR.

{¶20} IT IS SO ORDERED.

By Farmer, P.J.

Gwin, J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ Patricia A. Delaney

JUDGES

