

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, EX REL., COUNCIL  
PRESIDENT, KOREAN STEVENSON, :

Relator/counterrespondent, :

No. 110221

v. :

MAYOR OF EAST CLEVELAND,  
BRANDON KING, ET AL., :

Respondents/counterrelators. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT:** WRIT GRANTED IN PART AND DENIED IN PART;  
COUNTERCLAIM WRIT DISMISSED  
**DATED:** March 29, 2021

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Writs of Mandamus  
Motion No. 544781  
Order No. 545050

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***Appearances:***

McDonald Humphrey, L.L.C., and Jonathan M.  
McDonald, *for relator/counterrespondent*.

Mayor Brandon King and Finance Director Charles Iyahan,  
*pro se*.

EILEEN T. GALLAGHER, J.:

{¶ 1} Relator/counterrespondent, East Cleveland City Council President  
Korean Stevenson, in her official capacity, seeks writs of mandamus directing

respondents/counterrelators, East Cleveland Mayor Brandon King and East Cleveland Director of Finance Charles Iyahen, to (1) allocate \$50,000 for the payment of services rendered by an attorney retained by city council, (2) force the mayor to act in compliance with Section 72 of the East Cleveland City Charter for expenditures in excess of \$2,500, and (3) provide responses to a public-records request made by an attorney on behalf of Stevenson in her official capacity. King and Iyahen also seek a writ of mandamus to direct Stevenson to “schedule and put a Permanent Appropriations Ordinance \* \* \*, the Fiscal Recovery Plan Resolution \* \* \*, and a Transfer Deficit Reconciliation Ordinance \* \* \* on the Regular City Council Meeting Agenda for March 2, 2021 and March 16, 2021, as first and third reads, respectively; or, as Emergency Legislative pieces on March 16, 2021 \* \* \*.”

**{¶ 2}** Stevenson’s first and second claims for mandamus are denied, a writ of mandamus is granted for her third claim, and King and Iyahen’s request for mandamus is dismissed.

### **Factual and Procedural History**

**{¶ 3}** As part of the 2020 Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), East Cleveland received significant revenue it did not expect to receive when its 2020 budget was passed. After a reorganization of council took place in mid-2020, Stevenson began making inquiries into several issues, including the expenditure of CARES Act funds. Council passed Resolution 39-20 on November 6, 2020, to contract for attorney services from special legal counsel to, in part, assist it in matters relating to these expenditures. On November 9, 2020, the

mayor vetoed the ordinance with a letter stating special counsel was not necessary because the city law director could ably serve the needs of council. The record does not establish that this veto was overridden by council.

**{¶ 4}** Stevenson and King continued to clash over Stevenson's requests for information about how CARES Act funds was being spent. So, on November 18, 2020, Stevenson, through special counsel, sent a public records request to the finance director seeking "all documents including, but not limited to, award letters, grant applications, executed contracts, disbursement receipts, and financial reports which outline where, when, and how the money has been disbursed to date."

**{¶ 5}** No official response to the records request appears in the record. Attached to the complaint is an email from the law director to the finance director responding to the finance director's request for direction about how to respond to the records request. The attorney that filed the records request was copied on the email, but this communication between the law director and finance director is not addressed to the attorney, nor does it provide a response to the records request. In the email, the law director informed the finance director that it was the law director's opinion that the attorney was not properly retained to represent council, and therefore could not make a records request on behalf of a member of council. This level of professionalism appears to be shared by those involved in this dispute.

**{¶ 6}** Stevenson commenced this action by filing a complaint for mandamus on January 11, 2021. The parties participated in mediation, which was ultimately unsuccessful. In response to the complaint, on February 3, 2021, the

mayor and finance director filed a motion to dismiss that attached 128 pages of unauthenticated documents and made arguments that relied on facts outside of the complaint. So, on February 8, 2021, this court converted the motion to dismiss to a motion for summary judgment, and held the motion in abeyance pursuant to a February 4, 2021 scheduling order. The February 8, 2021 order provided notice of the conversion of the motion, and allowed King and Iyahen to amend or supplement their motion. The order also gave the parties an opportunity to submit evidence that was properly authenticated or stipulated, and set a briefing schedule. On the date any amendment to the converted motion for summary judgment was due, King and Iyahen filed a counterclaim instead. They did not amend their converted motion or submit properly authenticated evidence.

{¶ 7} The counterclaim sought a writ to compel Stevenson to schedule certain council meeting agenda items pursuant to East Cleveland Charter and state statutes. This court, in an order journalized on March 1, 2021, modified the briefing schedule to account for the new claims. In the order, we once again reminded the parties that all evidence must be stipulated to by the parties or authenticated pursuant to Civ.R. 56. We further warned the parties that any claim that failed to show by clear and convincing evidence entitlement to mandamus would be denied.

{¶ 8} Another order issued on March 1, 2021, directed the mayor and finance director to certify what records were produced, when they were released, what steps had been taken to fulfill the request, what steps, if any, still needed to be taken to satisfy the request, and whether the released records fully resolved the

records request. The mayor and finance director submitted a document with many of the same unauthenticated records that were attached to the motion to dismiss.

{¶ 9} On March 8, 2021, Stevenson filed a motion to dismiss the counterclaim with a request for sanctions for filing a frivolous claim, as well as a brief in opposition to King and Iyahan’s motion to dismiss that was converted to a motion for summary judgment. She also filed her own motion for summary judgment for the claims raised in her complaint. On March 12, 2021, King and Iyahan filed a combined brief in opposition to Stevenson’s motion for summary judgment and a brief in opposition to her motion to dismiss.

{¶ 10} The case is now fully briefed and before this court on cross-motions for summary judgment and Stevenson’s motion to dismiss.

### **Law and Analysis**

{¶ 11} The parties are asking this court to resolve significant issues that exist between the legislative and executive branch. “Any judicial resolution of such a dispute has significant political implications in the struggles for dominance of, control of, or impact on a government.” *Coyne v. Salvatore*, 8th Dist. Cuyahoga Nos. 79507, 79509, and 79510, 2002-Ohio-5819, ¶ 2, quoting *Dennis v. Luis*, 741 F.2d 628, 632 (3d Cir.1984). The system of checks and balances that have been established in the East Cleveland Charter means that sometimes the executive and legislative branches of government are going to find themselves in conflict. For the good of the people of East Cleveland, these coequal branches of government should endeavor to resolve their differences by using the tools that already exist at their

disposal to amicably move forward with solutions to the significant challenges facing their city. The acrimony apparent in the briefing, especially in the filings of King and Iyahan, and Stevenson's affidavit attached to her motion to dismiss, do nothing but damage the reputation of those attempting to denigrate other city leaders. This rancor only does further harm to the citizens of East Cleveland through the inability of the parties to conduct themselves commensurate with the level of trust granted to them by their constituents. John Adams said our government is "a government of laws, not of men." The animosity between city officials has led them far astray from this maxim. The parties have taken on the solemn mantle of public service. The mayor and councilpersons have responsibilities bestowed on them by the citizenry of East Cleveland. They must endeavor to put these citizens, always, first.

## **I. Standards for Mandamus**

{¶ 12} A writ of mandamus is an extraordinary remedy that will not issue except in the exceptional case. To be entitled to a writ of mandamus, relators must demonstrate by clear and convincing evidence that (1) they possess a right to the requested relief, (2) that respondent has a clear legal duty to provide the requested relief, and (3) they possess no other adequate remedy in the ordinary course of law. *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 437, 2006-Ohio-5439, 857 N.E.2d 88, ¶ 18, citing *State ex rel. Marsalek v. S. Euclid City Council*, 111 Ohio St.3d 163, 2006-Ohio-4973, 855 N.E.2d 811, ¶ 8.

Mandamus lies to compel the performance of an act which is clearly enjoined by law upon a respondent. *State ex rel. Pistillo, v. Shaker Heights* (1971), 26 Ohio St.2d 85[, 269 N.E.2d 42]; *State ex rel.*

*Freeman, v. Valentine* (1971), 25 Ohio St.2d 183[, 267 N.E.2d 590]. This principle applies whether the source of the duty involved is a city charter provision, *Cleveland ex rel. Neelon, v. Locher* (1971), 25 Ohio St.2d 49[, 266 N.E.2d 831], or a state statute, *State, ex rel. Tulley, v. Brown* (1972), 29 Ohio St.2d 235[, 281 N.E.2d 187].

*State ex rel. Ohio Motorists Assn. v. Masten*, 8 Ohio App.3d 123, 126, 456 N.E.2d 567 (8th Dist.1982).

{¶ 13} The claims in Stevenson’s complaint are before this court on cross-motions for summary judgment. “Summary judgment provides an abbreviated mechanism of resolving disputes where there is no material issue to decide and one party is entitled to judgment as a matter of law.” *Beswick Group N. Am., L.L.C. v. W. Res. Realty, L.L.C.*, 8th Dist. Cuyahoga No. 104330, 2017-Ohio-2853, ¶ 12. Pursuant to Civ.R. 56(C),

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.

{¶ 14} The parties “must set forth ‘specific facts’ by the means listed in Civ.R. 56(C)” showing they are entitled to summary judgment as a matter of law or that a genuine issue exists for trial. *Brown v. O’Reilly Automotive Stores, Inc.*, 2015-Ohio-5146, 54 N.E.3d 638, ¶ 17-18 (8th Dist.), citing *Dresher v. Burt*, 75 Ohio St.3d 280,

293, 296, 662 N.E.2d 264 (1996). “Because granting summary judgment under Civ.R. 56(C) terminates litigation without a trial on the merits, ‘[t]he requirements of the rule must be strictly enforced.’” *State ex rel. Parker v. Russo*, 158 Ohio St.3d 123, 2019-Ohio-4420, 140 N.E.3d 602, ¶ 10, quoting *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 360, 604 N.E.2d 138 (1992). Therefore, “[w]hen deciding a summary-judgment motion, it is generally error for a court to rely on other types of evidence that has not been authenticated by way of an attached affidavit.” *Id.*, citing *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.*, 72 Ohio St.3d 94, 97, 647 N.E.2d 788 (1995); *Rogoff v. King*, 91 Ohio App.3d 438, 446, 632 N.E.2d 977 (8th Dist.1993).

{¶ 15} King and Iyahan’s counterclaim is before the court on Stevenson’s motion to dismiss. Under Civ.R. 12(B)(6), this court must presume all factual allegations made in the complaint as true and draw all reasonable inferences in favor of the nonmoving party. *State ex rel. Edwards v. Toledo City School Dist. Bd. of Edn.*, 72 Ohio St.3d 106, 108, 647 N.E.2d 799 (1995). Dismissal for failure to state a claim is appropriate if “it appeared beyond doubt that [the nonmoving party] could prove no set of facts entitling them to the requested extraordinary relief \* \* \*.” *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 14, citing *State ex rel. Brady v. Pianka*, 106 Ohio St.3d 147, 2005-Ohio-4105, 832 N.E.2d 1202, ¶ 6.



## **II. Legal Duty to Allocate Funds**

**{¶ 16}** Council President Stevenson’s claims in count one of her complaint that she is entitled to retain an attorney to represent and assist council and respondents must provide funds to pay for special counsel.

**{¶ 17}** East Cleveland Codified Ordinances (“East Cleveland Cod. Ord.”) 111.03(b) provides,

In addition to the election by Council of one Clerk of Council, the other officers and employees of Council as it deems necessary, to serve at the pleasure of Council, shall not exceed the following: one Assistant Clerk of Council; one Clerk Typist; one Deputy Clerk; and one special legal counsel and any of these positions may be served either on a full- or part-time basis as Council shall so determine.

**{¶ 18}** The section has a means of hiring for these positions: “All employees appointed pursuant to this section shall be appointed and/or terminated in the manner prescribed in division (a) above and the compensation for these employees shall be adjusted in the manner prescribed in division (a) above.”

**{¶ 19}** East Cleveland Cod. Ord. 111.03(a) provides,

As authorized and mandated by Section 102 of the Charter, in addition to and apart from the five elected public officials who are Council members \* \* \* the regular and part-time employees of the city within the organizational structure of Council, the legislative branch of the city government, which may be deemed for purposes of structure discussion as being similar to a “municipal department,” the employees may consist of a Clerk who shall be appointed and/or terminated by the President of Council, and Council may also elect such other officers and employees of Council as it deems necessary, to serve at the pleasure of Council.

**{¶ 20}** Finally, and more pertinent,<sup>1</sup> East Cleveland Cod. Ord. 111.03(d) provides for the contracting of professional services to assist council:

Nothing contained herein under this section shall be construed to restrict and/or limit the freedom to make such additional, unspecified appointments as it deems necessary from time to time, of professional persons or entities, to serve under contract, duly authorized by law and to render in behalf of the city or Council certain necessary and required professional services, as is or may be rendered by such professional nonemployee as special counsel, certified public accountants, auditors, bond counsel and such other specialists, including, but not limited to, other nonprofessional persons such as certified paralegals and other support staff, as deemed proper and necessary and provided such contract professional services are all within authorized appropriations.

**{¶ 21}** To invoke this power and retain special counsel, council passed Resolution 39-20. The resolution purported to authorize Stevenson to enter into a contract for legal services with an attorney at the law firm of McDonald Humphrey, L.L.C. It further required the deposit of \$50,000 to be placed in trust to pay monthly bills submitted by the attorney. However, the mayor vetoed the resolution, and the mayor's veto was not overridden by council. Pursuant to the charter, the mayor has veto power over all ordinances and resolutions passed by council. East Cleveland City Charter, Section 113(E).

**{¶ 22}** Stevenson's claim depends on the validity of a resolution that was passed by council in order to establish a legal duty on the part of the finance director to allocate funds to pay the attorney. King argues that he vetoed the resolution, and

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<sup>1</sup> The other provisions cited by Stevenson provide a means of hiring, as an employee of council, special legal counsel. That is not the path taken by council in this case. Council contracted for attorney services by a nonemployee.

council did not override that veto.<sup>2</sup> As a result, King and Iyehen assert that there is no legal duty to allocate funds.

{¶ 23} Stevenson's claim turns on whether the resolution passed by counsel is a valid legislative enactment because, while the charter and city ordinances provide council with the authority to hire outside legal counsel, the vehicle council chose to employ was subject to veto. What she is actually seeking is a declaration that the resolution passed by council is valid and the respondents have a legal duty to fulfill the obligations that flow from that legislative enactment.

{¶ 24} Although Stevenson has not pointed to any, there may be instances, even when a mayor has veto power over all ordinances and resolutions passed by council, when a mayor's veto is a nullity. For instance, when a mayor attempts to veto an administrative, rather than legislative action of council, this court found the mayor's veto to be ineffective. *Green v. Mayfield Hts.*, 8th Dist. Cuyahoga No. 85853, 2005-Ohio-6359. Therefore, King's power to veto a resolution passed by council is not absolute, even though the East Cleveland City Charter states the mayor's veto power in absolute terms.

{¶ 25} Based on the briefing of the parties, it is unclear if the resolution passed by council is valid. Mandamus should not issue in a doubtful case. *State ex rel. Newell v. Gaul*, 8th Dist. Cuyahoga No. 98326, 2012-Ohio-4068, ¶ 10, citing

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<sup>2</sup> A copy of the resolution and the mayor's veto is attached to Stevenson's complaint.

*State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977). Because the duty of King and Iyachen is unclear, this court declines to issue a writ of mandamus.

{¶ 26} Accordingly, Stevenson’s motion for summary judgment is denied in part, and King and Iyachen’s converted motion for summary judgment is granted in part. Stevenson’s first claim for relief in mandamus is denied.

### **III. Requirements for Expenditures and Contracts**

{¶ 27} In the second claim for relief, Stevenson seeks an order from this court directing King to comply with a charter provision that requires competitive bidding and authorization from council to expend money in excess of \$2,500.

{¶ 28} King acknowledges section 72 of the East Cleveland City Charter requires competitive bidding and council approval for contracts that exceed \$2,500 or “the amount stipulated by state law, whichever amount is the greater,” but cites to R.C. 735.05 as one reason he does not need council approval.

{¶ 29} This statutory provision states, “The director of public service may make any contract, purchase supplies or material, or provide labor for any work under the supervision of the department of public service involving not more than fifty thousand dollars.” R.C. 735.01 specifies that “[i]n each city there shall be a department of public service which shall be administered by a director of public service. The director shall be appointment by the mayor \* \* \*. He shall make rules and regulations for the administration of the affairs under his supervision.”

{¶ 30} However, King has not established that this statute applies to all contracts that involve the expenditure of CARES Act funds. Section 22 of the East

Cleveland City Charter establishes a department of public service. The cited statutory provision only applies to those contracts for which the director of public service has supervision. Pursuant to R.C. 735.02, these include

the improvement and repair of streets, avenues, alleys, lands, lanes, squares, wharves, docks, landings, market houses, bridges, viaducts, aqueducts, sidewalks, playgrounds[,] sewers, drains, ditches, culverts, ship channels, streams, and watercourses, the lighting, sprinkling, and cleaning of public places, and the construction of public improvements and public works, except those having reference to the department of public safety, or as otherwise provided in Title VII of the Revised Code.

[As well as those items under his or her supervision, including] municipal water, lighting, heating, power, garbage, and other undertakings of the city, and parks, baths, playgrounds, market houses, cemeteries, crematories, sewage disposal plants, and farms, and shall make and preserve surveys, maps, plans, drawings, and estimates. He shall supervise the construction and have charge of the maintenance of public buildings and other property of the city not otherwise provided for in Title VII. He shall have the management of all other matters provided by the legislative authority of the city in connection with the public service thereof.

**{¶ 31}** It is unclear from the record in this case whether this provision applies to the expenditures of CARES Act funds at issue in Stevenson's complaint, and King has not shown that the provision applies such that it would preclude relief in mandamus. But similarly, Stevenson has not cited to any specific example of expenditures that require competitive bidding and council approval. She only asserts that East Cleveland has received millions of dollars in CARES Act funds and King has not sought council approval for their expenditure since July 2020. Under the city charter, King has a duty to competitively bid contracts and council has a duty to approve contracts as set forth in Section 72 of the East Cleveland Charter. These

provisions are not optional. However, Stevenson has not shown by clear and convincing evidence that King has failed to fulfill this legal requirement with any specificity.

{¶ 32} Further, Stevenson’s claim appears to include a request that past and future actions of the mayor be controlled through mandamus. However, “where, as here, an action in mandamus does not provide effective relief unless accompanied by an ancillary injunction, it would appear that injunction rather than mandamus is the appropriate remedy.” *State ex rel. Corron v. Wisner*, 25 Ohio St.2d 160, 163, 267 N.E.2d 308 (1971). In making this determination, this court must determine the true nature of the requested relief in order to determine whether the cause of action ““seeks to prevent, rather than to compel, official action.”” *State ex rel. Satow v. Gausse-Milliken*, 98 Ohio St.3d 479, 2003-Ohio-2074, 786 N.E.2d 1289, ¶ 13, quoting *State ex rel. Cunningham v. Am. Cunningham Co., L.P.A.*, 94 Ohio St.3d 323, 324, 2002-Ohio-789, 762 N.E.2d 1012, quoting *State ex rel. Stamps v. Montgomery Cty. Automatic Data Processing Bd.*, 42 Ohio St.3d 164, 166, 538 N.E.2d 105 (1989).

{¶ 33} For instance, where a complaint for writ of mandamus sought a declaration that a city’s apportionment plan was unconstitutional, the Supreme Court of Ohio declined to issue a writ because “mandamus would not provide effective relief unless accompanied by an ancillary preventive or prohibitory injunction.” *State ex rel. Walker v. Bowling Green*, 69 Ohio St.3d 391, 393, 632 N.E.2d 904 (1994).

**{¶ 34}** Here, Stevenson seeks relief that requires ongoing compliance with a directive from this court for King to comply with a provision of the city’s charter. Local government are continuing to receive federal funds to support their efforts to alleviate the harms caused by the COVID-19 pandemic. She seeks to prevent King from expending funds in excess of \$2,500 without competitive bidding and the approval of council. Therefore, relief in mandamus would not constitute a full and effective remedy without injunctive relief governing future conduct. Mandamus is not the appropriate remedy.

**{¶ 35}** Finally, the requested relief in her complaint does not relate just to CARES Act funding, but to “any expenditure.” “A ‘writ of mandamus will not issue to compel the general observance of laws in the future.’” *State ex rel. ACLU of Ohio v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶ 27, quoting *State ex rel. Kirk v. Burcham*, 82 Ohio St.3d 407, 409, 696 N.E.2d 582 (1998). This includes general compliance with charter provisions. *State ex rel. City of E. Cleveland v. Norton*, 8th Dist. Cuyahoga No. 98772, 2013-Ohio-3723.

**{¶ 36}** In *Norton*, this court was faced with a very similar claim that “[t]he mayor has followed a consistent pattern of accepting grants and funds without approval of the receipt of such funds by Council as required by the Codified Ordinances and Charter.” *Id.* at ¶ 5. We denied the requested writ, holding that mandamus “does not lie to compel a public officer to follow the law generally in the conduct of duties” and “does not lie to compel a public officer prospectively to observe the law.” *Id.* at ¶ 10.

**{¶ 37}** For these reasons, Stevenson’s motion for summary judgment is denied in part, and King and Iyahen’s converted motion for summary judgment is granted in part. Stevenson’s second claim for relief in mandamus is denied.

#### **IV. Public Records**

**{¶ 38}** In her third claim for relief, Stevenson, in her official capacity as council president, seeks to enforce Ohio’s Public Records Act, R.C. 149.43.

**{¶ 39}** The Act imposes a responsibility on public officials to ensure Ohioans have access to public records. Where a public official has failed to provide records in a reasonable time, mandamus is one remedy available in R.C. 149.43(C)(1). *State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner’s Office*, 153 Ohio St.3d 63, 2017-Ohio-8988, 101 N.E.3d 396, ¶ 15, citing *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. A public records mandamus action differs from other mandamus actions in that relators do not have to demonstrate that they lack any other adequate remedy. *Welsh-Huggins v. Jefferson Cty. Prosecutor’s Office*, Slip Opinion No. 2020-Ohio-5371, ¶ 24, quoting *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, ¶ 15, quoting *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St.3d 255, 2012-Ohio-753, 963 N.E.2d 1288, ¶ 25. The Public Records Act is also to be liberally construed to ensure broad access to records. *Id.*

**{¶ 40}** In a November 18, 2020 letter, Stevenson requested the following records from Iyahen: “[A]ll documents including, but not limited to, award letters,



grant applications, executed contracts, disbursement receipts, and financial reports which outline where, when, and how the [CARES Act] money has been disbursed to date.”<sup>3</sup>

**{¶ 41}** The verified complaint includes the written records request sent to Iyahun by email and an email from the East Cleveland Law Director, Willa Hemmons, to Iyahun, dated November 18, 2020. The email header included with the law director’s email indicates that the attorney making the public records request was copied. The correspondence indicates that the resolution passed by council purporting to hire a law firm to represent council was vetoed by King and the veto was not overridden. The email goes on to inform Iyahun that the attorney could make a public records request as a private citizen, but not on behalf of council.

**{¶ 42}** This cannot be deemed an appropriate response to a public records request. The correspondence was not directed to the records requestor, but merely copied the requestor on an internal discussion of the records request that occurred between the law director and the finance director. The records request was made to Iyahun, and no correspondence from Iyahun to the requestor is properly before the court on summary judgment.

**{¶ 43}** This is all the court is left with to determine the action because King and Iyahun have not provided this court with any evidence that can properly be

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<sup>3</sup> In her motion for summary judgment, Stevenson asserts records requests were made to Iyahun and King, but the written request attached to her complaint is addressed solely to Iyahun and the finance department.

considered on summary judgment. Civ.R. 56(C) limits the consideration of evidence on summary judgment to “the pleading[s], depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action.” “When deciding a summary-judgment motion, it is generally error for a court to rely on other types of evidence that has not been authenticated by way of an attached affidavit.” *Russo*, 158 Ohio St.3d 123, 2019-Ohio-4420, 140 N.E.3d 602, at ¶ 10, citing *Springfield Local School Dist. Bd. of Edn.*, 72 Ohio St.3d at 97, 647 N.E.2d 788 (1995); *King*, 91 Ohio App.3d at 446, 632 N.E.2d 977 (8th Dist.1993) (“The proper procedure for the introduction of evidentiary matter not specifically authorized by Civ.R. 56(C) is to incorporate the material by reference into a properly framed affidavit.”).

{¶ 44} Despite two separate journal entries issued by this court warning the parties that only evidence stipulated to by the parties or properly authenticated pursuant to Civ.R. 56(C) would be considered by the court, King and Iyahan have failed to authenticate any of the pertinent documents attached to their converted motion for summary judgment or their certification to this court, filed March 8, 2021. Stevenson even argued in her March 8, 2021 brief in opposition to King and Iyahan’s motion for summary judgment that none of the documents were properly authenticated. Despite this, King and Iyahan continued to attach unauthenticated documents to their combined briefs in opposition, filed March 12, 2021. In fact, almost 200 pages of documents were attached to this filing without any

authenticating affidavit, and only one document, a May 5, 2020 ordinance numbered 11-20, was certified.

**{¶ 45}** King and Iyahan point to two affidavits that were supplied with their March 8, 2021 certification and claim that all documents included with it were authenticated by these affidavits. The affidavits are from two members of the East Cleveland City Council. Both affidavits contain the following passage: “That I and my Council Colleagues were told by the Administration in meetings that CARES Act funds, deposited without prior notice into the City’s bank account, was spent on the First Responders, Hazard Pay, PPE Supplies and for Small Business grants, see attached.” These averments cannot be said to authenticate the pertinent attached documents.<sup>4</sup> This barest of statements does not address what records were provided to council, and the averments actually state that council was “told” how CARES Act funds were spent, not what documents were received by council that memorialized how funds were spent. Further, these council members only have personal knowledge of documents received by council, not the authenticity of those documents. So, at most, they can aver that documents were received by council, even though they technically do not. Therefore, this court cannot consider the evidence King and Iyahan so vehemently claim is properly before this court.

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<sup>4</sup> These affidavits do authenticate purported proposed legislation that the affiants claim Stevenson refuses to pass. However, those documents are not responsive to Stevenson’s records request or this court’s certification order that was limited to the records that were produced to Stevenson as a result of the public-records request and the steps taken to fulfill the request. These records were not produced to Stevenson as a result of a public-records request.

{¶ 46} In arguing for the denial of this claim for relief, King and Iyehen also point to purported conflicts of interest because the firm of McDonald Humphrey, L.L.P. represents a plaintiff in a lawsuit against the city of East Cleveland. They argue this ethics violation is grounds to grant their motion for summary judgment. This is not the appropriate forum to lodge an attorney ethics violation because this court does not have jurisdiction to adjudicate such a claim. The Supreme Court of Ohio has original jurisdiction to govern the ethics of its bar in the state of Ohio. Ohio Constitution, Article IV, Section 2(B)(1)(g). Further, none of the documents King and Iyehen point to for support can be considered by this court for the reasons stated above. Therefore, this does not constitute grounds to deny the requested relief in mandamus.

{¶ 47} Generally, having some other adequate remedy at law does not prevent relief in mandamus pursuant to the provisions of R.C. 149.43. However, this case is unique in that relator is requesting records in her official capacity from the same government that she serves in that capacity. Relator may have alternate and more expedient means of vindicating her right to access records. She has a right to request and receive public records. East Cleveland Cod. Ord. 103.02(c). The East Cleveland City Council may convene hearings, issue subpoenas, call witnesses, and conduct investigations or audits. East Cleveland Cod. Ord. 111.02. Under these provisions, city council may convene an investigation or audit involving any city official. Therefore, it is unclear why such an avenue of relief would not fully resolve this issue. However, Stevenson claims in her affidavit attached to the brief in

opposition to summary judgment to have used these means to attempt to obtain records, and was unsuccessful.

**{¶ 48}** Further, this is not the first dispute between the legislative and executive branch of a government involving public records. The Supreme Court of Ohio addressed a claim for the release of public records sought by a state legislator from the governor. *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105. The state representative sought records relating to a proposed school-funding plan, apparently in his official capacity. The Supreme Court of Ohio issued a limited writ of mandamus directing the parties to continue to work together to satisfy the records request. *Id.* at ¶ 22. Therefore, there is no reason to believe that these alternative means of access to records should preclude relief in mandamus in the present case. Ohio's Public Records Act is to be construed to give broad access to public records, "and any doubt is resolved in favor of disclosure of public records." *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 376, 662 N.E.2d 334 (1996), citing *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St.3d 245, 246, 643 N.E.2d 126 (1994).

**{¶ 49}** In an apparent affront to this public policy, King and Iyehen argue in their converted motion for summary judgment that because the government of East Cleveland is being overseen by the Ohio Office of Budget and Management ("OBM"), it is required to send reports and information to that office. So, they argue, they should not have to produce records to Stevenson because any mismanagement will be discovered by the OBM. This has no impact on whether records sought through

a public-records request must be produced. It only serves to demonstrate that records and reports exist and were not produced in response to the records request.

**{¶ 50}** Without any supporting evidence, King and Iyehen argue that records responsive to Stevenson’s request do not exist. Presumably, some funds were spent to support salaries of emergency services personnel employed by East Cleveland and there may not be any specific records regarding the reallocation of money in the general fund to denote this. However, this is not the total of expenditures in evidence before this court. At several points in their arguments, King and Iyehen acknowledge that CARES Act funds were expended as small business grants and for the purchase of personal protective equipment (“PPE”). The affidavit of Timothy R. Austin, executed March 5, 2021, and the affidavit of Ernest L. Smith, executed March 5, 2021, both attached to the March 8, 2021 Certification of Records filed by King and Iyehen state as much. Yet, King and Iyehen insist, again without any supporting evidence, that no grant applications for the award of small business grants exist.

**{¶ 51}** Presumably, these grants were awarded based on some criteria, but no records were produced to indicate to whom grants were awarded, for how much, and when. The affidavits also mention the purchase of PPE. The combined brief in opposition, filed by King and Iyehen on March 12, 2021, also states that PPE was purchased by individual departments and “the invoices were paid as they arrived with no pre-existing ‘contract.’” This further demonstrates that these invoices involving the expenditure of CARES Act funds exist, but were not produced.

{¶ 52} Stevenson’s records request included a nonexhaustive list of the type of records sought, but King and Iyahan have chosen to treat the request as if it sought only the potential items listed in the request. It did not. It constituted a request for all financial records held by Iyahan and his office that involved the expenditure of CARES Act funds.

{¶ 53} Part of the issue that may have led to confusion is the broad and expansive nature of the records request. “[I]t is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue.” *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶ 21. A request “for all records” of whatever type and form involving a certain subject is generally the type of request that has been found to be overly broad and vague. *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 314, 750 N.E.2d 156 (2001). Stevenson’s records request was not limited to specific records and failed to identify the records she sought with any specificity.

{¶ 54} This problem was exacerbated when Iyahan did not seek clarification or ask that the request be narrowed, as is required by R.C. 149.32(B)(2). This statute provides,

If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing

the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

**{¶ 55}** The only response to the request properly before this court does not deny the request as overly broad or vague, and does not provide the requestor with an opportunity to revise the request. As explained earlier, the only response before this court is an unresponsive internal communication between the finance director and the law director. This did not relieve the finance director, the officer to which the records request was directed and who presumably has financial records responsive to the requests, from actually responding to the request.

**{¶ 56}** A denial of the request asking that the request be narrowed and informing the requestor of the methods and means of storage and form, as is required by R.C. 149.43(B)(2), may have helped to resolve this dispute. At the very least, it could have constituted a timely response to the records request.

**{¶ 57}** Further, the converted motion for summary judgment filed by King and Iyahan did not argue that the records request was vague or overly broad.<sup>5</sup> Therefore, this court does not find that the scope of the records request is a reason to deny the requested writ.

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<sup>5</sup> King and Iyahan did make this argument in a motion for more definite statement, filed February 17, 2021. This motion was denied because the nature of a records request that was made at some point in the past is not changed by modification of a pleading in an action to enforce the Public Records Act. If the records request is vague or overly broad, that is a reason to deny the request, not to request an amendment of a pleading that cannot modify the nature of the request.



**{¶ 58}** This court grants a writ of mandamus directing Iyahen to produce records responsive to the records request submitted to him on November 18, 2020. Iyahen shall produce all records in his possession or his department's possession pursuant to the records request: "[A]ll financial records including, but not limited to, award letters, grant applications, executed contracts, disbursement receipts, and financial reports which outline where, when, and how C.A.R.E.S. Act money has been disbursed to date." Iyahen shall do so within 21 days of the date of this opinion. Iyahen is not required to, but may charge a fee for producing copies of those records limited to the actual cost of copying records in whatever form reasonably chosen by Stevenson pursuant to R.C. 149.43(B)(6) and the public records policy of the city of East Cleveland, or make the records available for inspection at no charge, whatever Stevenson's preference. Stevenson shall notify Iyahen, in writing, of her election under R.C. 149.43(B)(6) within 5 days of the date of this order and simultaneously file the notice with this court. If Iyahen requires prepayment of any fee, an invoice detailing the charges must be provided, in writing, to Stevenson and simultaneously filed with this court within 7 days of the filing of her notification. Stevenson must pay the charges, limited to the actual cost of producing copies of the records, before Iyahen is required to produce them to Stevenson. The failure of Iyahen to produce all responsive records in his possession or the possession of the department of finance may result in sanctions, including contempt of court, punishable by monetary fines or jail.

**{¶ 59}** Stevenson also requests an award of costs and attorney fees in this action. Pursuant to R.C. 149.43(C)(3)(a)(i), when a court grants a writ of mandamus directing a public office or person to comply with the public records act, the court shall award all costs. The court may also award reasonable attorney fees when the above occurs and it finds any one of the following factors exists:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(iii) The public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section. No discovery may be conducted on the issue of the alleged bad faith of the public office or person responsible for the public records. This division shall not be construed as creating a presumption that the public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order described in this division.

**{¶ 60}** Based on the record before this court, we find that Iyahan failed to respond affirmatively or negatively to the public-records request. The internal email between the law director and finance director does not constitute a response to the public-records request, and no other response is present in the record before this court.

**{¶ 61}** R.C. 149.43(C)(3)(c) goes on to state that a court shall not award attorney fees if both of the following conditions are met:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

This court finds neither condition is satisfied here.

**{¶ 62}** Therefore, Stevenson is entitled to costs and reasonable attorney fees. Stevenson is granted leave to file, within 21 days of the date of this decision, a motion for attorney fees limited only to the litigation of the public records portion of this action. The failure to include evidence and affidavits of sufficient specificity will result in the reduction or denial of attorney fees. *See* R.C. 149.43(C)(4). King and Iyehen may file a brief in response within 14 days of the date Stevenson's motion for attorney fees is filed.

{¶ 63} Stevenson’s motion for summary judgment is granted in part. King and Iyahan’s motion for summary judgment is denied in part. Stevenson’s third claim for relief in mandamus is granted.

## **V. Duty of the Legislative Branch**

{¶ 64} King and Iyahan’s counterclaim seeks to have this court direct Stevenson to comply with certain provisions of the city charter and state statutes dealing with legislative appropriations and budgets. Specifically, King and Iyahan ask this court to order Stevenson “to schedule and put a permanent appropriations ordinance \* \* \*, the fiscal recovery plan resolution \* \* \*, and a transfer deficit reconciliation ordinance \* \* \* on the regular city council meeting agenda for March 2, 2021 and March 16, 2021, as first and third reads, respectively; or, as emergency legislative pieces on March 16, 2021.”

{¶ 65} Generally, it is not the province of courts to invade the legislative process. The separation of powers inherent in the system of government laid out in federal and state constitutions and the East Cleveland City Charter prevent a court from intruding into the legislative process. *Masten*, 8 Ohio App.3d at 125-126, 456 N.E.2d 567 (8th Dist.1982), quoting *Locher*, 25 Ohio St.2d at 52, 266 N.E.2d 831 (1971). However, mandamus may lie to compel a legislative body to act. “Where a city charter requires that city council shall enact ordinances to provide for the enforcement or execution of a particular provision of the charter, a mandatory duty is placed upon city council to comply with that requirement of the charter, and mandamus will lie to compel the council to act.” *Masten* at 126, quoting *Locher* at

52. This includes ministerial acts that are mandated by city charter. *State ex rel. Neal, Jr. v. Moyer*, 3d Dist. Allen No. 1-84-44, 1985 Ohio App. LEXIS 5380 (Jan. 9, 1985). Further, where a duty is clear, a court may direct a legislative body to act, but may not dictate what manner that action must take. *State ex rel. Scott v. Masterson*, 173 Ohio St. 402, 405, 183 N.E.2d 376 (1962).

Mandamus lies only to enforce the performance of a ministerial duty or act. A ministerial duty or act has been defined as one that a person performs in a given state of facts in a prescribed manner in the obedience to the mandate of legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act being done. *State ex rel. Neal, Jr. v. Moyer*, 3d Dist. Allen No. 1-84-44, 1985 Ohio App. LEXIS 5380 (Jan. 9, 1985). The object of a writ of mandamus is to compel an officer to do a specific act required by law, and not to compel the general enforcement of the mandate of the law.

*Norton*, 8th Dist. Cuyahoga No. 98772, 2013-Ohio-3723, at ¶ 3.

{¶ 66} Stevenson argues that the requested writ should be denied because King and Iyehen have not included all necessary parties in this action. She argues that all members of council are necessary parties because King and Iyehen are asking this court to force council to pass certain legislation. But the counterclaim is more limited than Stevenson's expansive reading. It asks that Stevenson be required to place certain items on meeting agendas in order to meet deadlines established by the laws of East Cleveland and the state of Ohio — something that she has the power to do as president of council. Therefore, Stevenson's request for sanctions is denied.

{¶ 67} According to King and Iyehen's verified complaint, pursuant to East Cleveland City Charter, Section 60, he prepared a budget estimate and sent it to council in November 2020. The properly authenticated budget estimate and

proposed budget ordinance are attached to the counterclaim. Section 61 of the East Cleveland City Charter requires council to “at once prepare an appropriations ordinance” once the budget estimate is received by council. It further provides for “public hearings upon the appropriations ordinance before a committee of the whole, and public notice shall be given of such hearing. The council shall not pass the appropriation ordinance until ten days after such public hearing nor before the first Monday in January.” Under this charter provision, council has a legal duty to prepare and pass an appropriations ordinance.

**{¶ 68}** Section 106 of the East Cleveland City Charter also provides “No ordinance, unless it be an emergency measure, shall be passed until it has been read at two regular meetings not less than two weeks apart, or the requirement of such reading has been dispensed with by the vote of at least four members of the Council.”

**{¶ 69}** King claims that Stevenson has a legal duty to place the above items on meeting agendas. For support, he points to a portion of East Cleveland City Charter, Section 102: “The president of Council, in addition to the Council’s obligations, rights, and duties as Councilperson at large, shall preside at all meetings and shall perform such duties as may be imposed upon him or her by the Council.” Nowhere in the counterclaim does King establish that Stevenson has a legal duty to place items on meeting agendas. It does not appear from all the local laws and rules cited in the counterclaim that an exclusive duty is placed on Stevenson to add items to an agenda. She certainly has that ability, but King and Iyehen have not established that she has that duty.

{¶ 70} East Cleveland City Council may have a mandatory duty to pass, by ordinance, various budgetary and financial measures enforceable in mandamus. *See State ex rel. Campanella v. Kucinich*, 59 Ohio App.2d 278, 282, 394 N.E.2d 318 (8th Dist.1977). However, that is not the question before this court. The question is limited to whether Stevenson has a mandatory duty to place certain items on meeting agendas. King and Iyahan have not pointed to any clear legal duty imposed on Stevenson that she add items to an agenda.

{¶ 71} Stevenson should act to ensure that East Cleveland does not lose crucial funding at a time of great civic strife. This moral imperative, however, does not equate to a legal imperative when King and Iyahan have not pointed to any source of mandatory duty that is placed on Stevenson to add items to meeting agendas.

{¶ 72} The meeting agendas are created by the clerk of council. East Cleveland Cod. Ord. 113 contains the rules of order for council meetings. Rule 10 concerns the preparation, transmittal, and limitations of agendas for council meetings. Rule 10(a) places the burden on the clerk of council to prepare an agenda.

{¶ 73} King and Iyahan have failed to point, with specificity, to any source of a legal duty imposed by law on Stevenson to add items to a council meeting agenda.<sup>6</sup> Again, mandamus will not issue in the doubtful case. *Gaul*, 8th Dist. Cuyahoga No.

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<sup>6</sup> In fact, King and Iyahan filed a status update on March 18, 2021, again with unauthenticated documents, stating that various financial ordinances were passed by council without any actions on the part of Stevenson.

98326, 2012-Ohio-4068, at ¶ 10, citing *Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977).

{¶ 74} Stevenson's motion to dismiss is granted. King and Iyahan's request for writ of mandamus is dismissed.

## **Conclusion**

{¶ 75} Stevenson's first and second claim for relief in mandamus are denied. Her request for a writ of mandamus directing Iyahan to produce records pursuant to her November 18, 2020 records request is granted. Iyahan shall produce all records responsive to that request in his possession or the possession of his department within 21 days of the date of this decision. Stevenson is granted leave to file a motion for attorney fees pursuant to R.C. 149.43(C), limited to the time spent litigating the issue of public records, together with any supporting documentation, evidence, and affidavits, within 21 days from the date of this decision. King and Iyahan have 14 days from the filing of that motion in which to file a response to the motion for attorney fees. King and Iyahan's request for writ of mandamus is dismissed. This court rules that there is no just reason for delay pursuant to Civ.R. 54(B).

{¶ 76} Relator/counterrespondent's request for writ of mandamus is granted in part and denied in part. Respondent/counterrelator's request for writ of mandamus is dismissed.



{¶ 77} Costs to respondents/counterrelators. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

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EILEEN T. GALLAGHER, JUDGE

LARRY A. JONES, SR., P.J., and  
MARY EILEEN KILBANE, J., CONCUR