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IN THE COURT OF CLAIMS OF OHIO

KIMBERLY F. BROWN OF THE BROWN
REPORT NEWSPAPER

Requester

v.

CITY OF CLEVELAND

Respondent

Case No. 2018-01426PQ

Judge Patrick M. McGrath

DECISION

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Respondent city of Cleveland (City) objects to a special master's report and recommendation (R&R) issued on March 28, 2019.

I. Background

Requester Kimberly F. Brown (Brown) of the Brown Report Newspaper sued the City under R.C. 2743.75(D), alleging that the City had failed to respond to a request for "the meeting records from Councilperson Joe Jones with Cloverside residents." (Complaint.) Brown sought "the date of the meeting, the agenda, the attendance sheet and a clear copy of the vote regarding the secondary [street] signage for Saniyah Nicholson." (Complaint.) (Nicholson, a child, was shot on Cloverside Avenue.)

The court appointed an attorney as a special master in the cause. The special master referred the case to mediation. After mediation failed to successfully resolve all disputed issues between the parties, the court returned the case to the special master's docket.

The City responded to Brown's complaint and moved for relief pursuant to Civ.R. 12(B)(6) and (C). The special master ordered the City to submit supplemental pleadings and to file certain records under seal. On March 28, 2019, the special master issued a R&R, wherein (1) he recommended the denial of the City's motion to dismiss, (2) he found clear and convincing evidence to support a conclusion that street

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addresses of attendees to a Cloverside residents' meeting satisfied the statutory definition of "records" contained in R.C. 149.011(G), and (3) he found that telephone numbers and email addresses of attendees may be redacted. (R&R, 4, 8.) The special master urged the court to issue an order (1) that would grant "the claim for disclosure of the meeting sign-in sheets with only telephone numbers and email addresses redacted," (2) that would find that Brown's claims "are otherwise moot;" and (3) that would specify that Brown is entitled to recover from the City the costs associated with the action, including the twenty-five-dollar filing fee. (R&R, 8.)

Seven business days after the City received a copy of the R&R, the City, through counsel, filed written objections. In a certificate of service accompanying the objections, the City's counsel certified that she sent a copy of the objections "via regular mail" to Brown.

Brown has not filed a timely response to the City's objections.

II. Law and Analysis

R.C. 2743.75(F)(2) governs objections to a special master's R&R issued under R.C. 2743.75. Pursuant to R.C. 2743.75(F)(2), either party "may object to the report and recommendation within seven business days after receiving the report and recommendation by filing a written objection with the clerk and sending a copy to the other party by certified mail, return receipt requested. * * * If either party timely objects, the other party may file with the clerk a response within seven business days after receiving the objection and send a copy of the response to the objecting party by certified mail, return receipt requested. The court, within seven business days after the response to the objection is filed, shall issue a final order that adopts, modifies, or rejects the report and recommendation."

Upon review, the court finds that the City's objections are timely filed, but the objections are procedurally irregular because the City failed to send a copy of its objections to Brown "by certified mail, return receipt requested," as required by R.C.

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2743.75(F)(2). Notwithstanding the procedural irregularity of the City's objections, the court will consider the objections in the interest of justice.

The City presents two objections for the court's determination.

Objection No. 1: "Special Master's Report and Recommendation should not be adopted by this Court because the addresses on the sign in sheet do not constitute a public record and Respondent provided Requester the records requested."

The special master found that clear and convincing evidence supports a conclusion that street addresses of attendees to the Cloverside residents' meeting were used to document the procedures, participants, and decision of Council Member Jones, thereby satisfying the statutory definition of "records" contained in R.C. 149.011(G). (R&R, 8.) The special master reasoned:

A requirement of the Cloverside Residents' Meeting was that only residents of Cloverside and invited community leaders would be in attendance. Thus, the home addresses on the sign-in sheet document the status of persons attending the meeting and/or voting. These are records that Councilman Jones necessarily relied on in reporting to an applicant for secondary signage that "residents of Cloverside Avenue voted against the secondary name."

(Footnote omitted.) (R&R, 7.)

Evidence in the record buttresses the special master's reasoning. According to a letter from Counsel Member Joseph T. Jones to "Residents of Cloverside Avenue" (a copy of which is attached to the City's response to Brown's complaint), Council Member Jones invited residents of Cloverside Avenue to a meeting on September 6, 2018, at Harvard Community Services Center to discuss renaming Cloverside Avenue in memory of Saniyah Nicholson. Council Member Jones stated in the letter that "only residents of Cloverside Avenue and invited community leaders will be in attendance at this meeting." And in a letter from Council Member Jones to Marshwanette M. Daniels (a copy of which is attached to the complaint and the City's response), Council Member

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Jones stated: "I am writing you for two reasons: to let you know the results of a meeting held earlier this month regarding secondary street signage in memory of your daughter and to offer another way to honor Saniyah's memory. While expressing great sympathy, residents of Cloverside Avenue voted against adding the secondary name. As the councilman of Cleveland's Ward 1 I must respect their wishes. That being said, I believe there is a way to ensure Saniyah's memory. I am working with the city of Cleveland to determine an appropriate memorial. * * *."

Additionally, the sign-in sheets (which were filed under seal) constitute documents received in the course of the meeting with residents of Cloverside Avenue. According to R.C. 149.011(G), as used in R.C. Chapter 149, the term "records" "includes any document, device, or item, regardless of physical form or characteristic, * * * created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." Here, as the special master noted, the sign-in sheets (including the attendees' addresses) ostensibly were used by Council Member Jones to ensure that only residents of Cloverside Avenue voted on the matter before the attendees at the meeting. It follows that Council Member Jones used the sign-in sheets to document the decisions, and procedures regarding the denial of the street renaming. The sign-in sheets therefore are subject to disclosure under R.C. 149.43. See *State ex rel. Cincinnati Enquirer v. Ronan*, 127 Ohio St.3d 236, 2010-Ohio-5680, 938 N.E.2d 347, ¶ 16 (when a school district opened a post office box and used documents in the post office box, the documents became records subject to disclosure under R.C. 149.43).

Moreover, to the extent that the special master found no evidence that telephone numbers or email addresses "was used at all, or was obtained for other than administrative convenience" (R&R, 8), the court finds well-taken the special master's

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recommendation that telephone numbers or email addresses, or both, properly may be redacted.

The court determines that the City's first objection should be overruled.

Objection No. 2: "Special Master's recommendation to provide costs to Requester should be rejected because the City complied with its obligations to respond to Requester's public records request and there is no evidence the City conducted itself unreasonably."

R.C. 2743.75(F)(3) establishes the available relief to a person, who has sought relief under R.C. 2743.75 and who, according to a judicial determination, has been denied access to public records. R.C. 2743.75(F)(3) provides:

If the court of claims determines that the public office or person responsible for the public records denied the aggrieved person access to the public records in violation of [R.C. 149.43(B)] and if no appeal from the court's final order is taken under division (G) of this section, both of the following apply:

(a) The public office or the person responsible for the public records shall permit the aggrieved person to inspect or receive copies of the public records that the court requires to be disclosed in its order.

(b) The aggrieved person shall be entitled to recover from the public office or person responsible for the public records the amount of the filing fee of twenty-five dollars and any other costs associated with the action that are incurred by the aggrieved person, but shall not be entitled to recover attorney's fees, except that division (G)(2) of this section applies if an appeal is taken under division (G)(1) of this section.

Because the court has upheld the special master's determination that Brown was entitled to receive copies of redacted sign-in sheets, Brown has been denied access to public records in violation of R.C. 149.43(B). It follows that under R.C. 2743.75(F)(3)(b) that Brown, as an aggrieved person, is entitled to recover from the City the amount of the filing fee of twenty-five dollars and any other costs associated with this action that are incurred by Brown, except attorney fees.

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The court determines that the City's second objection should be overruled.

III. Conclusion

For reasons set forth above, the court concludes that the City's objections should be overruled.

A handwritten signature in black ink, appearing to read "Patrick M. McGrath", is written over a horizontal line.

PATRICK M. MCGRATH
Judge

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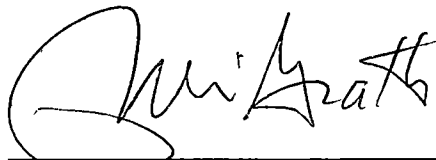
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For the reasons set forth in the decision filed concurrently herewith, and upon independent review of the objected matters, the court **OVERRULES** respondent's objections and the court adopts the special master's report and recommendation of March 28, 2019.

In accordance with the special master's recommendation, the court **ORDERS** respondent to forthwith permit requester to inspect or receive copies of sign-in sheets of a meeting held on September 6, 2018, at Harvard Community Services Center by Council Member Joseph T. Jones, with only telephone numbers or email addresses, or both, redacted, as stated in the decision filed concurrently herewith. Requester is entitled to recover from respondent the amount of filing fee of twenty-five dollars and any other costs associated with this action that are incurred by respondent, except attorney fees. Judgment is rendered in favor of requester. Court costs are assessed against respondent. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.



PATRICK M. MCGRATH
Judge

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cc:

KIMBERLY F BROWN OF THE BROWN
REPORT NEWSPAPER
c/o Kimberly F Brown
16201 Lotus Drive
Cleveland OH 44128

Elizabeth M Crook
City of Cleveland Department of Law
601 Lakeside Avenue Room 106
Cleveland OH 44114-1077

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