

[Cite as *Mentch v. Cleveland Hts. Univ. Hts. Library*, 2020-Ohio-5162.]

FRANCES MENTCH

Requester

v.

CLEVELAND HEIGHTS UNIVERSITY  
HEIGHTS LIBRARY

Respondent

Case No. 2020-00301PQ

Special Master Jeff Clark

REPORT AND RECOMMENDATION

{¶1} Ohio’s Public Records Act, R.C. 149.43, provides that upon request a public office “shall make copies of the requested public record available to the requester at cost and within a reasonable period of time.” R.C. 149.43(B)(1). Ohio courts construe the Public Records Act liberally in favor of broad access, with any doubt resolved in favor of disclosure of public records. *State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. & Corr.*, 156 Ohio St.3d 56, 2018-Ohio-5133, 123 N.E.3d 928, ¶ 12. The Act provides a remedy under R.C. 2743.75 if the court of claims determines that a public office has denied access to records in violation of R.C. 149.43(B). R.C. 149.43(C)(1)(a).

{¶2} On March 11, 2020, requester Frances Mentch made a public records request to respondent Cleveland Heights University Heights Library (“the library”) seeking the following records:

Please send me any documents you have regarding the scheduling, payment and use of the Library’s meeting room for Feb 26th. The topic was school vouchers.

(Complaint at 3.) On March 12, 2020, the library emailed Mentch the name of the organization that reserved the meeting room for February 26, 2020, and stated that the tax-exempt organization was not charged for use of the room. (*Id.*) The library provided Mentch with a copy of the room reservation form containing all requested information, but from which the contact name, primary phone, street address, and email address of the individual requesting the reservation was redacted. (*Id.* at 11.)

{¶3} On May 13, 2020, Mentch filed a complaint under R.C. 2743.75 alleging denial of access to public records in violation of R.C. 149.43(B). On July 24, 2020, the court was advised that mediation had failed to resolve all disputed issues. On July 31, 2020, the library filed a motion to dismiss (Response) on the ground that the information redacted from the responsive record was exempt from public records disclosure pursuant to R.C. 149.432 *Releasing library record or patron information*. On August 18, 2020, the library filed an unredacted copy of the withheld record, under seal.

### **Burdens of Proof**

{¶4} The Public Records Act (PRA or Act) is construed liberally in favor of broad access, and any doubt is resolved in favor of disclosure of public records. *State ex rel. Cordell v. Paden*, 156 Ohio St.3d 394, 2019-Ohio-1216, 128 N.E.3d 179, ¶ 7. In mandamus, “[a]lthough the PRA is accorded liberal construction in favor of access to public records, ‘the relator must still establish entitlement to the requested extraordinary relief by clear and convincing evidence.’” *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 428, 2016-Ohio-8394, 89 N.E.3d 598, ¶ 15. In an enforcement action under R.C. 2743.75, a requester must likewise establish public records violations by clear and convincing evidence. *Hurt v. Liberty Twp.*, 2017-Ohio-7820, 97 N.E.3d 1153, ¶ 27-30 (5th Dist.).

{¶5} If a public office asserts an exception to the PRA, the burden of proving the exception rests on the public office. *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. Exceptions to disclosure under the Act must be strictly construed against the public records custodian, and the custodian bears the burden to establish applicability of an exception. *State ex rel. Rogers v. Dept. of Rehab. & Corr.*, 155 Ohio St.3d 545, 2018-Ohio-5111, 122 N.E.3d 1208, ¶ 7. A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception. *Id.*; *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. Any doubt should be resolved in favor of disclosure. *State ex rel. James v. Ohio State Univ.*, 70 Ohio St.3d 168, 169, 637 N.E.2d 911 (1994).

### **Exceptions Claimed<sup>1</sup>**

{¶6} R.C. 149.43(A)(1) enumerates specific exceptions from the definition of “public record,” as well as a catch-all exception for “[r]ecords the release of which is prohibited by state or federal law.” R.C. 149.43(A)(1)(v). The library asserts that the redacted information is exempt pursuant to R.C. 149.432. The library initially referred Mentch to the library’s Service and Administration policy as authority for its redactions. (Complaint at 2.) However, exemptions to the Public Records Act are established only through state and federal law, and not through agency- or court-created policy preferences. *See Narciso v. Powell Police Dept.*, Ct. of Cl. No. 2018-01195, 2018-Ohio-4590, ¶ 9-10 and cases cited therein. The library’s internal policy does not constitute an exemption.

{¶7} The library has since asserted that exemptions contained in R.C. 149.432 are applicable to the withheld information. R.C. 149.43(B)(3) provides that “[the initial] explanation shall not preclude the public office \* \* \* from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.” The court may therefore consider application of additional exemptions.

### **Release of Library Record or Patron Information**

{¶8} R.C. 149.432(B) provides that “[a] library shall not release any library record or disclose any patron information except in the following situations,” none of which are applicable to this case. The prohibitions on release of library records and disclosure of patron information apply to “[a] library that is created, maintained, and regulated under Chapter 3375. of the Revised Code.” R.C. 149.432(A)(1)(b). The Cleveland Heights University Heights Library falls under R.C. Chapter 3375. (Herman Aff. at ¶ 4.).

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<sup>1</sup> The terms “exception” and “exemption” are used interchangeably in case law, and in this report.

As used in the statute, “library record” means a record in any form that is maintained by a library and that contains any of the following types of information:

- (a) Information that the library requires an individual to provide in order to be eligible to use library services or borrow materials; \* \* \*

R.C. 149.432(A)(2)(a). Name, telephone number, street address, and email address are fields requested in the library’s online application form to reserve the library’s meeting room service. (Herman Aff. at ¶¶ 6-8.) The term “library services” is not defined in or for the purposes of this statute, but the court may take notice that in ordinary English usage, specifically in the context of delivery of business goods and services, the arrangement for exclusive use of a meeting room for a set period of time constitutes the use by the scheduling party of a “service.” The redacted information thus falls squarely under the definition of a “library record,” and is exempt from public records release by the library maintaining the information. R.C. 149.432(B).

The other term utilized in R.C. 149.43(B), “patron information,” means:

“personally identifiable information about an individual who has used any library service or borrowed any library materials.”

R.C. 149.432(A)(3). The definition does not restrict the included term “patron” to a library cardholder, but includes any “individual” who otherwise satisfies the definition. “Personally identifiable information” is not defined in or for purposes of this statute. However, the court may take notice that the phrase is used in other public records contexts to include name, residential address, telephone numbers, social security number, email addresses, or other alphanumeric strings that alone or together are associated with an individual person. See, e.g. *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 725 N.E.2d 1144 (names, home addresses, family information, emergency contact information); *State ex rel. O’Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, 962 N.E.2d 297, ¶ 36 (names of parents and guardians; Social Security and telephone numbers;

children's names and dates of birth; names, addresses, and telephone numbers of caregivers; and names of and places of employment); *Narciso v. Powell Police Dept.*, Ct. of Cl. No. 2018-01195, 2018-Ohio-4590, ¶ 32 (name, image of face, email address, residential address, telephone number, workplace name, workplace location, and name of partner).

{¶9} The information withheld here is the contact name, primary phone, street address, and email address fields found within the library's Pending Reservations form.<sup>2</sup> (Complaint at 11.) On review in camera of the unredacted copy of the withheld record, I find that; 1) the contact name is of an individual person, 2) there is no indication that the primary phone number and street address are anything but personal and residential, respectively, and 3) the email address includes a fragment of the contact person's name. Under the facts and circumstances of this case, I find that the redacted name, telephone number, street address, and email address of the individual who scheduled use of the library meeting room for February 26, 2020 constitute personally identifiable information of that individual.

{¶10} Because the contact person used the library meeting room service by reserving it, and serving as the formal contact on behalf of an organization, their personally identifiable information falls squarely under the definition of "patron information," and is thus exempt from public records release by the library maintaining the information. R.C. 149.432(B).

{¶11} I conclude that the library has met its burden to show that the information redacted from the requested record falls squarely within the asserted exemptions.

### **Conclusion**

{¶12} Upon consideration of the pleadings, attachments, and sealed record filed in this case, I recommend the court find that the redacted information was properly

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<sup>2</sup> The library did not redact the non-individually identifying address fields associated with the contact person – city, state, and zip code.

withheld from requester pursuant to R.C. 149.432(B). I recommend that costs be assessed to requester.

*{¶13} 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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JEFF CLARK  
Special Master

Filed August 28, 2020  
Sent to S.C. Reporter 11/4/20