

IN THE COURT OF CLAIMS OF OHIO

JOSHUA MORRISON	Case No. 2022-00481PQ
Requester	Special Master Jeff Clark
v.	<u>REPORT AND RECOMMENDATION</u>
MAYOR MATTHEW STARR	
Respondent	

The Ohio Public Records Act (PRA) requires copies of public records to be made available to any person upon request. The state policy underlying the PRA is that open government serves the public interest and our democratic system. *State ex rel. Gannett Satellite Information Network, Inc. v. Petro*, 80 Ohio St.3d 261, 264, 685 N.E.2d 1223 (1997). To that end, the public records statute must be construed liberally in favor of broad access, with any doubt resolved in favor of disclosure of public records. *State ex rel. Rogers v. Dept. of Rehab. & Corr.*, 155 Ohio St.3d 545, 2018-Ohio-5111, 122 N.E.3d 1208, ¶ 6. This action is filed under R.C. 2743.75, which provides an expeditious and economical procedure to enforce the PRA in the Court of Claims.

On January 12, 2022, requester Joshua Morrison sent a public records request to the City of Mount Vernon, via email addresses mtvmayor@mountvernonohio.org (“the Mayor”) and clerkofcouncil@mountvernonohio.org seeking copies of “public records that include received and sent emails, digital documents (PDF, DOCX, PPTX and etc.) of the proposed city employee onboarding program.” Morrison requested a prompt response and to be notified if the city expected a significant delay in responding to or fulfilling the request. (Complaint at 2.) On June 15, 2022, Morrison filed a complaint under R.C. 2743.75 alleging denial of timely access to public records.

Following mediation, the City filed an answer and motion to dismiss (Response) on November 28, 2022. On November 29, 2022, Morrison filed a reply.¹

Burden of Proof

The requester in an action under R.C. 2743.75 bears an overall burden to establish a public records violation by clear and convincing evidence. *Hurt v. Liberty Twp.*, 2017-Ohio-7820, 97 N.E.3d 1153, ¶ 27-30 (5th Dist.). The requester bears an initial burden of production “to plead and prove facts showing that the requester sought an identifiable public record pursuant to R.C. 149.43(B)(1) and that the public office or records custodian did not make the record available.” *Welsh-Huggins v. Jefferson Cty. Prosecutor’s Office*, 163 Ohio St.3d 337, 2020-Ohio-5371, 170 N.E.3d 768, ¶ 33.

Motion to Dismiss

To dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt the claimant can prove no set of facts warranting relief after all factual allegations of the complaint are presumed true and all reasonable inferences are made in claimant’s favor. *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St.3d 580, 581, 669 N.E.2d 835 (1996). As long as there is a set of facts consistent with the complaint that would allow the claimant to recover, dismissal for failure to state a claim is not proper. *State ex rel. V.K.B. v. Smith*, 138 Ohio St.3d 84, 2013-Ohio-5477, 3 N.E.3d 1184, ¶ 10.

The Mayor does not dispute that Morrison reasonably identified the records he sought but moves to dismiss the complaint on the ground that he has now produced the requested records. (Response.) On review, the Special Master finds that mootness is not conclusively shown on the face of the complaint. Moreover, as the matter is now

¹ The reply was not accompanied by a completed proof of service, in the absence of which “[d]ocuments filed with the court shall not be considered.” Civ.R. 5(B)(4). However, in the interest of justice the Special Master reviewed the reply and will reference certain portions below.

fully briefed this defense is subsumed in the arguments to deny the claim on the merits. It is therefore recommended the motion to dismiss be denied.

Suggestion of Mootness

In an action to enforce R.C. 149.43(B), a public office may produce the requested records prior to the court's decision, and thereby render the claim for production moot. *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, 950 N.E.2d 952, ¶ 18-22. The Mayor asserts he has now provided Morrison with the available public records responsive to his request. (Response, *passim*.) Morrison concurs that more than 1400 pages of records were provided to him in batches during litigation, beginning on August 9, 2022 and concluding on November 3, 2022. (Reply.) He does not deny that the Mayor has now produced all records responsive to the request. The Special Master accordingly finds the claim for production of records is moot.

Independent of the claim for production, Morrison's claim of untimeliness in production of the documents is not moot. (Reply.) “[A] separate claim based on the untimeliness of the response persists unless copies of all required records were made available ‘within a reasonable period of time.’ R.C. 149.43(B)(1).” *State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 22, 2018-Ohio-5110, 123 N.E.3d 895, ¶ 19.

Timeliness

“The primary duty of a public office when it has received a public-records request is to promptly provide any responsive records within a reasonable amount of time and when a records request is denied, to inform the requester of that denial and provide the reasons for that denial. R.C. 149.43(B)(1) and (3).” *Cordell v. Paden*, 156 Ohio St.3d 394, 2019-Ohio-1216, 128 N.E.3d 179, ¶ 11. Offices have a statutory duty to “organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with [R.C. 149.43(B)].” R.C. 149.43(B)(2). Whether a public

office has provided records within a “reasonable period of time” depends upon all the pertinent facts and circumstances of the case. *Cordell* at ¶ 12.

The seven months taken by the City to provide any records at all in response to Morrison’s request, and the ten months before production of records was completed, are both well beyond a “reasonable period of time.” See generally *State ex rel. Ware v. Bureau of Sentence Computation*, 10th Dist. Franklin No. 21-AP-419, 2022-Ohio-3562, ¶ 2, 16-17 and cases cited therein. Even where unusual events impact their response processes, such as the Covid-19 pandemic, public offices must comply with the duty to provide records within a reasonable period of time. *State ex rel. Schumann v. Cleveland*, 8th Dist. Cuyahoga No. 109776, 2020-Ohio-4920, ¶ 8-9; See *State ex rel. Ware v. Akron*, 164 Ohio St.3d 557, 2021-Ohio-624, 174 N.E.3d 724, ¶ 5, 18 (illness of employee and cyber disruption of city’s e-mail). In this case the City offers no excuse of any kind for its seven-month delay in commencing production. See *State ex rel. Simonsen v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 08AP-21, 2009-Ohio-442, ¶ 10, 36; *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, ¶ 31-33.

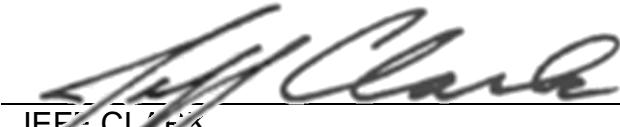
On the facts and circumstances before the court, the City’s delay of seven to ten months between receiving the request and providing the responsive records constitutes a failure to make copies of records available within a reasonable period of time, in violation of R.C. 149.43(B)(1).

Conclusion

Upon consideration of the pleadings and attachments the Special Master recommends the court find requester’s claim for production of records moot. The Special Master further recommends the court find that respondent failed to produce the requested public records within a reasonable period of time. It is recommended requester be entitled to recover from respondent the amount of the filing fee of twenty-

five dollars and any other costs associated with the action that were incurred by requester, and that court costs be assessed to respondent.

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).



JEFF CLARK
Special Master

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