

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.)

KIMANI E. WARE)

RELATOR,)

VS.)

AFTAB PUREVAL)

HAMILTON CO. CLERK OF COURTS)

RESPONDENT)

CASE NO.2022-0191

ORIGIANL ACTION IN MANDAMUS

MERIT BRIEF OF RELATOR KIMANI E. WARE

Kimani ware
A470743
TRUMBULL CORRECTIONAL INST.
5701 BURNETT ROAD
LEAVITTSBURG, OHIO,44430

RELATOR, PRO. SE.

PHILIP H. CUMMINGS, reg. no. 0041497p
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OHIO, 45202

COUNSEL FOR RESPONDENT

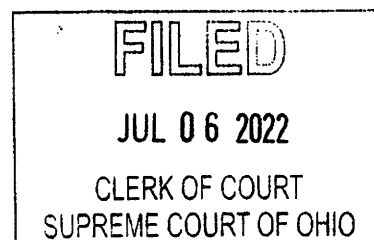
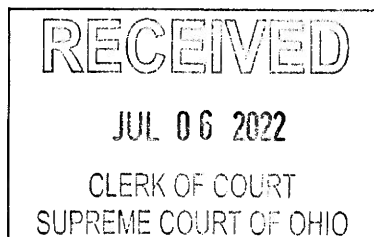


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STATUTES

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I. INTRODUCTION

I made a public records request by way of certified mail for a copies of records maintained in the clerk's office, the clerk's office received my records requests on February 2,2021 and signed the receipt acknowledgement. The clerk's office did not respond to my public records requests, on February 22,2022 relator filed an original action in mandamus, respondent still has not provided relator with copies of the requested records.These records are maintained in clerk's possession and control. The clerk's office failure to respond and ,make copies of the requested records available to relator violated of it's duties pursuant to section 149.43(B)(1) of ohio revised code to make copies of the requested public record available to relator at cost and within a reasonable period of time.

II. STATEMENT OF FACTS

On January 26, 2021, the relator mailed by certified mail two public records requests to Hamilton County Clerk of Courts, for a copy of the oath offices of judges, Charles J. Kubicki, Lisa C. Allen, Thomas O. Beridon, and a copy of the documents from case no. C-010153, Docket sheet, writ of mandamus complaint, motion to dismiss and judgment entry filed on July 27, 2001. The Hamilton County Clerk of Courts office did not respond to the relator's public records request that was properly delivered, and signed for acknowledging receipt of the two public records requests by Hamilton County Clerk of Courts office. Due to Hamilton County Clerk of Courts office failure to respond to the relator's public records requests, the relator filed an original action in mandamus on February 22, 2022 to compel Hamilton County Clerk of Courts office to comply with the relator's public records request and provide copies of the requested records.

III. LAW AND ARGUMENT

A. OHIO PUBLIC RECORDS ACT, R.C.149.43(B)(1)

Upon request, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time.

Ohio's Public Records Act, R.C. 149.43, requires a public [****5] office to make copies of public records available to any person upon request within a reasonable period of time. R.C. 149.43(B)(1). A "public record" is a record "kept by any public office." R.C. 149.43(A)(1). Mandamus is an appropriate remedy by which to compel compliance with the Public Records Act. R.C. 149.43(C)(1)(b); State ex rel. Physicians Comm. for Responsible Med. v. Bd. of Trs. of Ohio State Univ., 108 Ohio St. 3d 288, 2006-Ohio-903, 843 N.E.2d 174, 6.

B. MANDAMUS

Mandamus is the appropriate remedy to compel compliance with the Public Records Act. R.C. 149.43(C)(1)(b). To be entitled to a writ of mandamus, relator must demonstrate by clear and convincing evidence that he has a clear legal right to the requested relief and that respondent has a clear legal duty to provide it. State ex rel. Cincinnati Enquirer v. Sage, 142 Ohio St.3d 392, 2015-Ohio-974, 31 N.E.3d 616, ¶ 10. We 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. Cincinnati Enquirer v. Hamilton Cty., 75 Ohio St.3d 374, 376, 1996-Ohio-214, 662 N.E.2d 334 (1996).

C. STATUTORY DAMAGES, R.C 149.43(c)(2)

If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

A person requesting public records, provided he has used a qualifying method of transmission, "*shall* be entitled to recover" an award of statutory damages "if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with R.C. 149.43(B)." (Emphasis added.) R.C. 149.43(C)(2). We have recognized that the Public Records Act "provides for an award of statutory damages * * * when a court determines that the public office failed to comply with an obligation to provide access to the records." State ex rel. Rogers v. Dept. of Rehab. & Corr., 155 Ohio St.3d 545, 2018-Ohio-5111, 122 N.E.3d 1208, ¶ 23.

PROPOSITION OF LAW NO. 1

Relator is entitled to a writ of mandamus compelling respondent Aftab Pureval to provide copies of the requested records that relator requested on January 26th, 2021 by certified mail.

On January 26, 2021 relator mailed by certified mail two public records request to Hamilton county clerk of courts for a copy of the oaths of office of Judges: Charles J. Kubicki, Lias C. Allen and Thomas O. Beridon, and a copy of documents from case no.C-010153, Docket Sheet, writ of mandamus complaint and judgment entry filed on July 27, 2001. Hamilton county clerk of courts did not respond to my public records requests, Hamilton county clerk of courts signed as acknowledgment of receipt of my public records requests on February 2, 2021.

Relator filed an original action in mandamus on February 22, 2022 to compel Hamilton county clerk of courts to respond to relator public records request and provide copies of the requested records. Hamilton still has not responded and provide relator with copies of the requested records. Hamilton clerk of courts failed in its duty to respond and provide relator with copies of the records he requested by certified mail on January 26, 2021.

Section 149.43(B)(1) of ohio revised code provides,

Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time.

This court has held that the Public Records Act does not require a public-records custodian to provide copies of public records free of charge. *State ex rel. Call v. Fragale*, 104 Ohio St.3d 276, 2004-Ohio-6589, 819 N.E.2d 294, ¶ 6. Instead, R.C. 149.43(B)(1) "requires only that copies of public records be made available at cost." *Call* at ¶ 6. Indeed, R.C. 149.43(B)(1) "authorizes a public office to require the prepayment of costs before providing copies of public records.

Hamilton county clerk of courts office did not make the requested public records available to relator at cost. Hamilton county clerk of court office did not respond at all to relator's public records requests.

Section 149.43(C)(1)(b) of ohio revised code provides,

If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may

(b) Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section.

This court has held that . Mandamus is an appropriate remedy by which to compel compliance with the Public Records Act. R.C. 149.43(C)(1)(b); State ex rel. Physicians Comm. for Responsible Med. v. Bd. of Trs. of Ohio State Univ., 108 Ohio St. 3d 288, 2006-Ohio-903, 843 N.E.2d 174, 6.

Relator filed an mandamus action in this honorable court on February 22,2022, Hamilton county clerk of courts office still has not responded to and provided copies of the requested public records that relator requested by certified mail on January 26,2021. Respondent failed in his obligation pursuant R.C. 149.43(B)(1) to make the records available to relator Kimani Ware.

Relator is entitled to a writ of mandamus to compel Hamilton county clerk of courts provide relator with copies of the requested public records, requested by certified mail January 26, 2021.

PROPOSITION OF LAW NO. 2

Relator is entitled to statutory damages pursuant section 149.43(C)(2) of ohio revised code, for Hamilton county clerk of courts failing to provide copies of the requested public records to relator.

Section 149.43(C)(2) of ohio revised code provides,

If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

On January 26,2021 relator mailed by certified mail two public records request to Hamilton county clerk of courts, for a copy of the oaths of office for Judge,Charles J. Kubicki, Lias C. Allen and Thomas O. Beridon, and a copy of documents from case no.C-010153, Docket Sheet, Writ of mandamus complaint, motion to dismiss and Judgment Entry filed on july 27,2001. hamilton county clerk of courts received my public records by certified mail on February 2, 2021 and did not respond to my requests. On February 22,2022 relator filed an original action in mandamus in the supreme court of ohio.

Relator public records request fairly describes the public records sought to hamilton county clerk of courts. Hamilton county clerk of courts failed in its duty pursuant to section 149.43(B) (1) of ohio revised code , which provides, Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person

responsible for public records shall make copies of the requested public record available to the requester at cost within reasonable period of time.

This honorable court has held that statutory damages under R.C. 149.43(C)(2) "are mandatory" whenever a public records custodian fails to comply with its obligations pursuant to R.C. 149.43(B)(1). State ex rel. Ellis v. Cleveland Police Forensic Lab., 2021-ohio-4487, 2021 Ohio Lexis 2534, ¶ 9 .

A requester of public records is required to make a public records request by hand delivery, electronic submission or certified mail [R.C. 149.43(C)(2)] to qualify for statutory damages. State ex rel. Kesterson v. Kent State Univ., 156 Ohio St.3d 13, 2018-ohio-5108, 123 N.E.3d 887, ¶ 13.

On January 26, 2021 relator Kimani Ware mailed his public records requests to Hamilton Co. Clerk of Courts by way of certified mail and respondent signed the return receipt as acknowledgment receipt of relator public records requests on 2/2/21. Respondent did not respond to relator public records requests, therefore, Aftab Pureval, Hamilton Co. Clerk of Courts breached his duties pursuant to R.C. 149.43(B)(1) he owes to relator, relator is entitled to statutory damages under R.C. 149.43(C)(2).

Relator requests that this honorable court award him statutory damages pursuant to R.C. 149.43(C)(2).

PROPOSITION OF LAW NO.3

Relator Kimani Ware is entitled to court costs under R.C. 149.43(C)(3) for respondent Aftab Pureval, hamilton co. clerk of courts breaching his duties to provide copies of the requested public records.

Section 149.43(C)(3)(a)(i) provides:

If the court orders the public office or person responsible for the public record to comply with division(B) of this section, the court shall determine and award to the relator all court costs.


Respondent, Aftab Pureval failed to comply with his obligations under R.C. 149.43(B)(1), to provide relator with copies of the requested public records. respondent received relator's public records requests by certified mail on February 2, 2021 (see exhibit attached to relator's complaint filed on February 22, 2022) respondent failed to respond or provide copies of the requested public records, Aftab Pureval, hamilton co. clerk of courts consciously disregarded relator public records requests, and failed to provide copies of the records.

Relator request that this honorable award relator court cost pursuant R.C. 149.43(C)(3).

CONCLUSION

Relator is entitled to a writ of mandamus to compel Aftab Pureval, hamilton co. clerk of courts to comply with his obligations to provide relator with copies of the requested public records that relator requested by certified mail on January 26,2021 and respondent signed the certified mail return receipt as an acknowledgment of receiving relator two public records requests on February 2, 2021. Relator is entitled to Statutory Damages under R.C. 149.43(C)(2), and relator is entitled to court cost under R.C. 149.43(C)(3).


RESPECTFULLY SUBMITTED,



Kimani Ware, Pro. Se.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of relator's merit brief upon respondent counsel, PHILIP R. CUMMINGS, REG. NO.0041497p at 230 east ninth street, suite 4000,Cincinnati,Ohio,45202 by regular U.S. Mail on this 23rd day of June 2022.



Kimani Ware
A470743
TRUMBULL CORRECTIONAL INST.
5701 BURNETT ROAD
LEAVITTSBURG, OHIO, 44430

RELATOR, PRO. SE.

APPENDIX

Minister Kimani Ware
(A470743)
Trumbull Corr. Inst.
P.O. Box 901
Leavittsburg, Ohio, 44430

TO:

Hamilton Co. Clerk of Courts

1000 Main Street

RE: Public Records Requests

Cincinnati, Ohio, 45202

Date: January 26th, 2021

CERTIFIED MAIL

APPX.
Pg. 1

Request one

I request a copy of the following records:
a copy of the following Judges oaths of
office, 1) Charles T. Kubicki, 2) Lisa
C. Allen, 3) Thomas O. Baridon

Request Two

I request a copy of the following from case no.
C-010153, Docket sheet, Writ of Mandamus complaint
Motion To DISMISS, Judgment Entry filed on
July 27, 2001

certificate of service

I certify that I served these two public records requests
upon Hamilton Co. Clerk of Courts on: January 26, 2021 by
certified mail. [Signature]

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Hamilton Co. Clerk of Courts
1000 Main Street
Cincinnati, OH 45202
Two Public Records Requests

2. Article Number (Transfer from service label)
7017 2400 0000 1299 8899

9590 9403 0173 5120 8942 27

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [Signature] Agent Addressee

B. Received by (Printed Name) [Signature] C. Date of Delivery
FEB 02 2021

D. Is delivery address different from the address on the label? Yes
if YES, enter delivery address below: No

USPS 45203

3. Service Type
 Adult Signature
 Adult Signature Restricted Delivery
 Certified Mail®
 Certified Mail Restricted Delivery
 Collect on Delivery
 Collect on Delivery Restricted Delivery
 Insured Mail
 Insured Mail Restricted Delivery (over \$500)
 Priority Mail Express®
 Registered Mail™
 Registered Mail Restricted Delivery
 Return Receipt for Merchandise
 Signature Confirmation™
 Signature Confirmation Restricted Delivery

EXHIBIT
A

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.

KIMANI E. WARE

A470-743

TRUMBULL CORRECTIONAL INSTITUTION

5701 BURNETT ROAD

LEAVITTSBURG, OHIO, 44430

RELATOR

v.

AFTAB PUREVAL

HAMILTON CO. CLERK OF COURTS

1000 MAIN STREET

CINCINNATI, OHIO, 45202

RESPONDENT

22-0191

CASE NO.

ORIGINAL ACTION IN MANDAMUS

PURSUANT TO R.C. 149.43(C)(1)

APPX.
Pg. 2

COMPLAINT FOR A WRIT OF MANDAMUS

Kimani Ware

A470743

TRUMBULL CORRECTIONAL INSTITUTION

5701 BURNETT ROAD

LEAVITTSBURG, OHIO, 44430

RELATOR, PRO. SE.

FILED

FEB 22 2022

CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED

FEB 18 2022

CLERK OF COURT
SUPREME COURT OF OHIO

I. INTRODUCTION

1. This is an original action seeking a writ of mandamus pursuant to section 149.43(C)(1) and section 2731.02 of ohio revised code to compel respondent Aftab Pureval, Hamilton county clerk of courts to respond to relator's proper R.C.149.43 public records request which was properly served upon respondent's office by certified mail on February 2,2021, and namely that Aftab Pureval, hamiltion county clerk of courts to immediately comply with its duties and obligations pursuant to section 149.43(B)(1) of ohio revised code to provide copies of, and access to the requested public records, that are maintained in the clerk's possession and forward all records responsive to relator's request, without any more delay.

II. JURISDICTION

2. This court has original jurisdiction over this case pursuant to Article 4, section 2 of ohio Constitution and section 149.43(C)(1) of ohio revised code.

III. PARTIES

3. Relator Kimani E. Ware is a citizen of ohio, and is incarcerated in Leavittsburg Ohio at Trumbull correctional institution.

4. Respondent Aftab Pureval is hold the public office of Hamilton county clerk of courts which is a public office as the term is defined by section 149.011(A) of ohio revised code. respondent Aftab Pureval is a public official as the term is defined by section 149.011(D) of ohio revised code, who have acted to deprive relator of his right to copies of the requested public records.

IV. LAW

5. The specific public records sought and requested by relator and mentioned in later paragrahs herein below , are clearly records as defined by section 149.011(G) of ohio revised code., and are public records as defined by section 149.43(A)(1) of ohio revised code.

V. STATEMENT OF FACTS

6. On January 26, 2021 I mailed by way of certified mail a public records request to Hamilton county clerk of courts (See Exhibit A attached to the affidavit of Kimani E. Ware filed with this complaint)

7. In my public records request, I requested a copy of the following: Judges of oath of Office, 1). Charles J. Kubicki, 2). Lisa C. Allen, 3). Thomas O. Beridon. I requested a copy of the Following from case no. C-010153, Docket Sheet, writ of mandamus complaint, motion to dismiss and judgment entry filed on July 27, 2001. (See Exhibit A, attached to the affidavit of Kimani E. Ware filed with complaint)

8. Hamilton county clerk of courts did not respond to my public records request, my request was delivered and signed for on February 2, 2021 (See Exhibit A attached to the affidavit of Kimani E. Ware filed with this complaint).

VI. LEGAL CLAIMS

9. Respondent Aftab Pureval is under a clear legal duty to provide relator with the requested public records maintained in his possession. Relator have a clear legal right to copies of the requested public records (See Exhibit A attached to the affidavit of Kimani E. Ware filed with this complaint).

10. Respondent Aftab Pureval is not performing his clear and legal duty pursuant to section 149.43(B)(1) of Ohio revised code.

11. Respondent Aftab Pureval failing to perform his legal duties pursuant to section 149.43 (B)(1) of Ohio revised code has caused injury to relator arising from the lost use of the records requested.

12. Relator Kimani E. Ware has fully complied with the statute [R.C.149.43(B)(1)] by Making a written public records request that fairly describes the public records and can be Clearly seen by looking at Exhibit A, attached to the affidavit of Kimani E. Ware filed with this complaint.

VII. REQUESTED RELIEF

13. Relator Kimani E. Ware requested that this honorable court issue a writ of mandamus compelling respondent Aftab pureval to provide relator with copies of the requested public records. (See Exhibit A attached to the affidavit of Kimani E. Ware filed with this complaint)

14. Relator Kimani E. Ware request that this honorable court award relator court costs pursuant to section 149.43(C)(1) of ohio revised code.

15. Relator Kimani E. Ware request that this honorable court award relator statutory damages pursuant to section 149.43(C)(1) and (C)(2) of ohio revised code beginning on the date of the filing of this action.

RESPECTFULLY SUBMITTED,

Kimani E. Ware
Kimani E. Ware

APPX.
Pg. 5

VERITY

I Kimani E. Ware hereby affirm that I competent to testify to all the facts contained in this complaint for a writ of mandamus and that paragraphs 1-15 are true and accurate to the best of my knowledge, understanding and belief.

COUNTY OF TRUMBULL }
STATE OF OHIO }

JURAT

Kimani E. Ware
Kimani E. Ware A 470743

SUBSCRIBED and AFFIRMED before this 26TH day of January, 2022.

Diane R. Filkorn
Notary Public

DIANE R. FILKORN
NOTARY PUBLIC • STATE OF OHIO
My commission expires Sept. 2, 2025



IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.

KIMANI E. WARE

A470743

TRUMBULL CORRECTIONAL INSTITUTION

5701 BURNETT ROAD

LEAVITTSBURG, OHIO, 44430

RELATOR

V.

AFTAB PUREVAL

HAMILTON COUNTY CLERK OF COURTS

1000 MAIN STREET

CINCINNATI, OHIO 45202

RESPNDENT

CASE NO.

ORIGINAL ACTION IN MANDAMUS

AFFIDAVIT OF RELATOR KIMANI E.
WARE IN SUPPORT FOR A WRIT OF
MANDAMUS

APPX.
Pg. 6

**AFFIDAVIT OF RELATOR KIMANI E. WARE
IN SUPPORT FOR A WRIT OF MANDAMUS**

Kimani E. Ware

A470-743

TRUMBULL CORRECTIONAL INSTITUTION

5701 BURNETT ROAD

LEAVITTSBURG, OHIO, 44430

PRO. SE.

IN THE SUPREME COURT OF OHIO

COUNTY OF TRUMBULL)
STATE OF OHIO) SS: AFFIDAVIT OF Kimani E. Ware
) IN SUPPORT FOR A WRIT OF MANDAMUS

I Kimani E. Ware first being duly affirmed and cautioned hereby state upon my personal knowledge and that I am competent to testify to the facts contained in this affidavit .

1). On January 26th,2021 I mailed a public records request by way of certified mail to Hamilton county clerk of courts. (A true and accurate copy of the certified mail return receipt is attached to this affidavit as Exhibit A).

2). In my public records request, I requested a copy of the following judges oath of Office, 1. Charles J. Kubicki, 2. Lisa C. Allen, 3. Thomas O. Beridon, and I also requested a copy of the following from case no.C-010153, docket sheet, writ of mandamus complaint, motion to dismiss and judgment filed on July 27,2001.(A true and accurate copy of my public records request is attached to this affidavit as Exhibit A)

3). On February 2, 2021 hamilton county clerk of courts signed as acknowledgment of receipt of my public records request.(See Exhibit A attached to this affidavit)


4). Hamilton county clerk of courts office did not respond to my public records request that received on February 2,2021 by certified mail.(See Exhibit A attached to this affidavit)

5). Hamilton county clerk of courts consciously disregarded my public records request by failing to respond, after receiving my records request that fairly describes the requested public records.(see Exhibit A attached to this affidavit)

6. As of the date of this affidavit I have not received a respond to my public records request from Hamilton county clerk of courts, nor have I received copies of the requested public records from Hamilton county clerk of courts.


FURTHER AFFIANT SAYETH NAUGHT.

JURAT

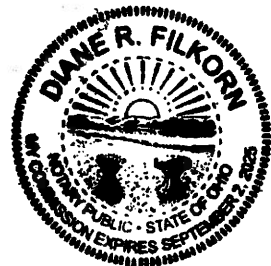

Kimani E. Ware A470743

APPX.
Pg. 7

SUBSCRIBED and AFFIRMED before me this 26TH day of January,2022.


Notary Public

DIANE R. FILKORN
NOTARY PUBLIC • STATE OF OHIO
My commission expires Sept. 2, 2025



Minister Kimani Ware
(A470743)
Trumbull corr. Inst.
P.O. Box 901
Leavittsburg, OH, 44430

TO:

Hamilton Co. Clerk of Courts

1000 Main Street

RE: Public Records Requests

Cincinnati, Ohio, 45202

Date: January 26th, 2021

CERTIFIED MAIL

Request one

I request a copy of the following records:
A copy of the following Judges oaths of
office, 1) Charles J. Kubicki, 2) Lisa
C. Allen, 3) Thomas A. Beridon

Request Two

I request a copy of the following from case no.
C-010153, Docket sheet, writ of Mandamus complaint
Motion to DISMISS, Judgment Entry filed on
July 27, 2001

certificate of service

I certify that I served these two public records requests
upon Hamilton Co. Clerk of Courts on: January 26, 2021 by
certified mail. Kimani Ware

APPX.
Pg. 8

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hamilton Co. Clerk of Courts
1000 Main Street
Cincinnati, OH's 45202
Two Public Records Requests



9590 9403 0173 5120 8942 27

2. Article Number (Transfer from service label)

7017 2400 0000 1299 8899

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Kimani Ware

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different? Yes
If YES, enter delivery address below: No

FEB 02 2021

USPS 45203

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

EXHIBIT

A

ORC Ann. 149.43

Current through File 100 (SB 256) of the 134th (2021-2022) General Assembly; acts signed as of
§ 149.43 Availability of public records

(A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:

- (a)** Medical records;
- (b)** Records pertaining to probation and parole proceedings, to proceedings related to the imposition of community control sanctions and post-release control sanctions, or to proceedings related to determinations under section 2967.271 of the Revised Code regarding the release or maintained incarceration of an offender to whom that section applies;
- (c)** Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;
- (d)** Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;
- (e)** Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;
- (f)** Records specified in division (A) of section 3107.52 of the Revised Code;
- (g)** Trial preparation records;
- (h)** Confidential law enforcement investigatory records;
- (i)** Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;
- (j)** DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;
- (k)** Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;
- (l)** Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;
- (m)** Intellectual property records;
- (n)** Donor profile records;
- (o)** Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;
- (p)** Designated public service worker residential and familial information;

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- (q)** In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;
- (r)** Information pertaining to the recreational activities of a person under the age of eighteen;
- (s)** In the case of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code or a review conducted pursuant to guidelines established by the director of health under section 3701.70 of the Revised Code, records provided to the board or director, statements made by board members during meetings of the board or by persons participating in the director's review, and all work products of the board or director, and in the case of a child fatality review board, child fatality review data submitted by the board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;
- (t)** Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;
- (u)** Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under section 4751.15 of the Revised Code or contracts under that section with a private or government entity to administer;
- (v)** Records the release of which is prohibited by state or federal law;
- (w)** Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;
- (x)** Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;
- (y)** Records listed in section 5101.29 of the Revised Code;
- (z)** Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;
- (aa)** Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;
- (bb)** Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;
- (cc)** Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code;
- (dd)** Personal information, as defined in section 149.45 of the Revised Code;
- (ee)** The confidential name, address, and other personally identifiable information of a program participant in the address confidentiality program established under sections 111.41 to 111.47 of the Revised Code, including the contents of any application for absent voter's ballots, absent voter's ballot identification envelope statement of voter, or provisional ballot affirmation completed by a program participant who has a confidential voter registration record; records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state; and any real property confidentiality notice filed under

section 111.431 of the Revised Code and the information described in division (C) of that section. As used in this division, "confidential address" and "program participant" have the meaning defined in section 111.41 of the Revised Code.

(ff) Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order;

(gg) The name, address, contact information, or other personal information of an individual who is less than eighteen years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident;

(hh) Protected health information, as defined in 45 C.F.R. 160.103, that is in a claim for payment for a health care product, service, or procedure, as well as any other health claims data in another document that reveals the identity of an individual who is the subject of the data or could be used to reveal that individual's identity;

(ii) Any depiction by photograph, film, videotape, or printed or digital image under either of the following circumstances:

(i) The depiction is that of a victim of an offense the release of which would be, to a reasonable person of ordinary sensibilities, an offensive and objectionable intrusion into the victim's expectation of bodily privacy and integrity.

(ii) The depiction captures or depicts the victim of a sexually oriented offense, as defined in section 2950.01 of the Revised Code, at the actual occurrence of that offense.

(jj) Restricted portions of a body-worn camera or dashboard camera recording;

(kk) In the case of a fetal-infant mortality review board acting under sections 3707.70 to 3707.77 of the Revised Code, records, documents, reports, or other information presented to the board or a person abstracting such materials on the board's behalf, statements made by review board members during board meetings, all work products of the board, and data submitted by the board to the department of health or a national infant death review database, other than the report prepared pursuant to section 3707.77 of the Revised Code.

(ll) Records, documents, reports, or other information presented to the pregnancy-associated mortality review board established under section 3738.01 of the Revised Code, statements made by board members during board meetings, all work products of the board, and data submitted by the board to the department of health, other than the biennial reports prepared under section 3738.08 of the Revised Code;

(mm) Telephone numbers for a victim, as defined in section 2930.01 of the Revised Code, a witness to a crime, or a party to a motor vehicle accident subject to the requirements of section 5502.11 of the Revised Code that are listed on any law enforcement record or report, other than when requested by an insurer or insurance agent investigating an insurance claim resulting from a motor vehicle accident.

A record that is not a public record under division (A)(1) of this section and that, under law, is permanently retained becomes a public record on the day that is seventy-five years after the day on which the record was created, except for any record protected by the attorney-client privilege, a trial preparation record as defined in this section, a statement prohibiting the release of identifying information signed under section 3107.083 of the Revised Code, a denial of release form filed pursuant to section 3107.46 of the Revised Code, or any record that is

exempt from release or disclosure under section 149.433 of the Revised Code. If the record is a birth certificate and a biological parent's name redaction request form has been accepted under section 3107.391 of the Revised Code, the name of that parent shall be redacted from the birth certificate before it is released under this paragraph. If any other section of the Revised Code establishes a time period for disclosure of a record that conflicts with the time period specified in this section, the time period in the other section prevails.

(2) "Confidential law enforcement investigatory record" means 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 following:

(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;

(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;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

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

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Designated public service worker" means a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the bureau of criminal identification and investigation, judge, magistrate, or federal law enforcement officer.

(8) "Designated public service worker residential and familial information" means any information that discloses any of the following about a designated public service worker:

(a) The address of the actual personal residence of a designated public service worker, except for the following information:

(i) The address of the actual personal residence of a prosecuting attorney or judge; and

(ii) The state or political subdivision in which a designated public service worker resides.

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a designated public service worker;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a designated public service worker by the designated public service worker's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the designated public service worker's employer from the designated public service worker's compensation, unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a designated public service worker;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

(9) As used in divisions (A)(7) and (15) to (17) of this section:

"Peace officer" has the meaning defined in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

"Correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

"County or multicounty corrections officer" means any corrections officer employed by any county or multicounty correctional facility.

"Youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

"Firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

"EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization,"

"EMT-basic," "EMT-I," and "paramedic" have the meanings defined in section 4765.01 of the Revised Code.

"Investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the Revised Code.

"Federal law enforcement officer" has the meaning defined in section 9.88 of the Revised Code.

(10) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(11) "Community control sanction" has the meaning defined in section 2929.01 of the Revised Code.

(12) "Post-release control sanction" has the meaning defined in section 2967.01 of the Revised Code.

(13) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(14) "Designee," "elected official," and "future official" have the meanings defined in section 109.43 of the Revised Code.

(15) "Body-worn camera" means a visual and audio recording device worn on the person of a peace officer while the peace officer is engaged in the performance of the peace officer's duties.

(16) "Dashboard camera" means a visual and audio recording device mounted on a peace officer's vehicle or vessel that is used while the peace officer is engaged in the performance of the peace officer's duties.

(17) "Restricted portions of a body-worn camera or dashboard camera recording" means any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following:

(a) The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the law enforcement agency knows or has reason to know the person is a child based on the law enforcement agency's records or the content of the recording;

(b) The death of a person or a deceased person's body, unless the death was caused by a peace officer or, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(c) The death of a peace officer, firefighter, paramedic, or other first responder, occurring while the decedent was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

- (d)** Grievous bodily harm, unless the injury was effected by a peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;
- (e)** An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was effected by a peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;
- (f)** Grievous bodily harm to a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;
- (g)** An act of severe violence resulting in serious physical harm against a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;
- (h)** A person's nude body, unless, subject to division (H)(1) of this section, the person's consent has been obtained;
- (i)** Protected health information, the identity of a person in a health care facility who is not the subject of a law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter;
- (j)** Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence;
- (k)** Information, that does not constitute a confidential law enforcement investigatory record, that could identify a person who provides sensitive or confidential information to a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person;
- (l)** Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer;
- (m)** Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;
- (n)** A personal conversation unrelated to work between peace officers or between a peace officer and an employee of a law enforcement agency;
- (o)** A conversation between a peace officer and a member of the public that does not concern law enforcement activities;
- (p)** The interior of a residence, unless the interior of a residence is the location of an adversarial encounter with, or a use of force by, a peace officer;
- (q)** Any portion of the interior of a private business that is not open to the public, unless an adversarial encounter with, or a use of force by, a peace officer occurs in that location.

As used in division (A)(17) of this section:

"Grievous bodily harm" has the same meaning as in section 5924.120 of the Revised Code.

"Health care facility" has the same meaning as in section 1337.11 of the Revised Code.

"Protected health information" has the same meaning as in 45 C.F.R. 160.103.

"Law enforcement agency" has the same meaning as in section 2925.61 of the Revised Code.

“Personal information” means any government-issued identification number, date of birth, address, financial information, or criminal justice information from the law enforcement automated data system or similar databases.

“Sex offense” has the same meaning as in section 2907.10 of the Revised Code.

“Firefighter,” “paramedic,” and “first responder” have the same meanings as in section 4765.01 of the Revised Code.

(18) **“Insurer” and “insurance agent”** have the same meanings as in section 3905.01 of the Revised Code.

(B)

(1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. 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.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester’s identity or

the intended use of the requested public record. Any requirement that the requester disclose the requester's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory, that the requester may decline to reveal the requester's identity or the intended use, and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person requests a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person requesting the copy under this division. The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person requesting the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by that person. Nothing in this section requires a public office or person responsible for the public record to allow the person requesting a copy of the public record to make the copies of the public record.

(7)

(a) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

(b) Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to division (B)(7) of this section. A public office that adopts a policy and procedures under division (B)(7) of this section shall comply with them in performing its duties under that division.

(c) In any policy and procedures adopted under division (B)(7) of this section:

(i) A public office may limit the number of records requested by a person that the office will physically deliver by United States mail or by another delivery service to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes;

(ii) A public office that chooses to provide some or all of its public records on a web site that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the public office's control or maintenance, and that charges no fee to search, access, download, or otherwise receive records provided on the web site, may limit to ten per month the number of records requested by a person that the office will deliver in a digital format, unless the requested records are not provided on the web site and unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.

(iii) For purposes of division (B)(7) of this section, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9)

(a) Upon written request made and signed by a journalist, a public office, or person responsible for public records, having custody of the records of the agency employing a specified designated public service worker shall disclose to the journalist the address of the actual personal residence of the designated public service worker and, if the designated public service worker's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the designated public service worker's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(b) Division (B)(9)(a) of this section also applies to journalist requests for:

(i) Customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information;

(ii) Information about minors involved in a school vehicle accident as provided in division (A)(1)(gg) of this section, other than personal information as defined in section 149.45 of the Revised Code.

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(10) Upon a request made by a victim, victim's attorney, or victim's representative, as that term is used in section 2930.02 of the Revised Code, a public office or person responsible for public records shall transmit a copy of a depiction of the victim as described in division (A)(1)(ii) of this section to the victim, victim's attorney, or victim's representative.

(C)

(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may do only one of the following, and not both:

(a) File a complaint with the clerk of the court of claims or the clerk of the court of common pleas under section 2743.75 of the Revised Code;

(b) Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(2) If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) 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;

(b) 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.

(3) In a mandamus action filed under division (C)(1) of this section, the following apply:

(a)

(i) If the court orders the public office or the person responsible for the public record to comply with division (B) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(ii) If the court makes a determination described in division (C)(3)(b)(iii) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section or if the court determines any of the following, the court may award reasonable attorney's fees to the relator, subject to division (C)(4) of this section:

(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.

(c) The court shall not award attorney's fees to the relator if the court determines both of the following:

(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.

(4) All of the following apply to any award of reasonable attorney's fees awarded under division (C)(3)(b) of this section:

(a) The fees shall be construed as remedial and not punitive.

(b) The fees awarded shall not exceed the total of the reasonable attorney's fees incurred before the public record was made available to the relator and the fees described in division (C)(4)(c) of this section.

(c) Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.

(d) The court may reduce the amount of fees awarded if the court determines that, given the factual circumstances involved with the specific public records request, an alternative means should have been pursued to more effectively and efficiently resolve the dispute that was subject to the mandamus action filed under division (C)(1) of this section.

(5) If the court does not issue a writ of mandamus under division (C) of this section and the court determines at that time that the bringing of the mandamus action was frivolous conduct as defined in division (A) of section 2323.51 of the Revised Code, the court may award to the public office all court costs, expenses, and reasonable attorney's fees, as determined by the court.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)

(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. A future official may satisfy the requirements of this division by attending the training before taking office, provided that the future official may not send a designee in the future official's place.

(2) All public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

The public office shall distribute the public records policy adopted by the public office under this division to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office

shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F)

(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or database by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(G) A request by a defendant, counsel of a defendant, or any agent of a defendant in a criminal action that public records related to that action be made available under this section shall be considered a demand for discovery pursuant to the Criminal Rules, except to the extent that the Criminal Rules plainly indicate a contrary intent. The defendant, counsel of the defendant, or agent of the defendant making a request under this division shall serve a copy of the request on the prosecuting attorney, director of law, or other chief legal officer responsible for prosecuting the action.

(H)

(1) Any portion of a body-worn camera or dashboard camera recording described in divisions (A)(17)(b) to (h) of this section may be released by consent of the subject of the recording or a representative of that person, as specified in those divisions, only if either of the following applies:

(a) The recording will not be used in connection with any probable or pending criminal proceedings;

(b) The recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal Procedure, and will not be used again in connection with any probable or pending criminal proceedings.

(2) If a public office denies a request to release a restricted portion of a body-worn camera or dashboard camera recording, as defined in division (A)(17) of this section, any person may file a mandamus action pursuant to this section or a complaint with the clerk of the court of claims pursuant to section 2743.75 of the Revised Code, requesting the court to order the release of all or portions of the recording. If the court considering the request determines that the filing articulates by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny release, the court shall order the public office to release the recording.

History

130 v 155 (Eff 9-27-63); 138 v S 62 (Eff 1-18-80); 140 v H 84 (Eff 3-19-85); 141 v H 238 (Eff 7-1-85); 141 v H 319 (Eff 3-24-86); 142 v S 275 (Eff 10-15-87); 145 v H 152 (Eff 7-1-93); 146 v H 5 (Eff 8-30-95); 146 v S 269 (Eff 7-1-96); 146 v H 353 (Eff 9-17-96); 146 v H 419 (Eff 9-18-96); 146 v S 277, § 1 (Eff 3-31-97); 146 v H 438, § 3 (Eff 7-1-97); 146 v S 277, § 6 (Eff 7-1-97); 147 v H 352 (Eff 1-1-98); 147 v H 421 (Eff 5-6-98); 148 v S 55 (Eff 10-26-99); 148 v S 78 (Eff 12-16-99); 148 v H 471 (Eff 7-1-2000); 148 v H 539 (Eff 6-21-2000); 148 v H 640 (Eff 9-14-2000); 148 v H 448 (Eff 10-5-2000); 148 v S 180 (Eff 3-22-2001); 149 v H 196 (Eff 11-20-2001); 149 v S 180 (Eff 4-9-2003); 149 v S 258, Eff 4-9-2003; 149 v H 490, § 1, eff. 1-1-04; 150 v H 6, § 1, eff. 2-12-04; 150 v H 431, § 1, eff. 7-1-05; 150 v H 303, § 1, eff. 10-29-05; 151 v H 141, § 1, eff. 3-30-07; 151 v H 9, § 1, eff. 9-29-07; 152 v H 214, § 1, eff. 5-14-08; 152 v S 248, § 1, eff. 4-7-09; 153 v H 1, § 101.01, eff. 10-16-09; 2011 HB 153, § 101.01, eff. Sept. 29, 2011; 2011 HB 64, § 1, eff. Oct. 17, 2011; 2012 HB 487, § 101.01, eff. Sept. 10, 2012; 2012 SB 314, § 1, eff. Sept. 28, 2012; 2013 HB 59, § 101.01, eff. Sept. 29, 2013; 2014 hb663, § 3, effective March 20, 2015; 2014 hb663, § 1, effective March 23, 2015; 2015 hb64, § 101.01, effective September 29, 2015; 2016 hb359, § 1, effective September 8, 2016; 2016 sb321, § 1, effective September 28, 2016; 2016 hb317, § 1, effective September 28, 2016; 2016 hb471, § 1, effective December 19, 2016; 2018 hb8, § 1, effective September 28, 2018; 2018 hb312, § 1, effective November 2, 2018; 2018 hb34, § 1, effective November 2, 2018; 2018 sb201, § 1, effective March 22, 2019; 2018 sb229, § 1, effective March 22, 2019; 2018 sb214, § 1, effective April 5, 2019; 2018

hb341, § 1, effective April 5, 2019; 2018 hb139, § 1, effective April 8, 2019; 2018 hb425, § 1, effective April 8, 2019; 2019 hb166, § 101.01, effective October 17, 2019; 2020 sb284, § 1, effective March 24, 2021; 2021 sb4, § 1, effective September 7, 2021; 2021 hb110, § 101.01, effective September 30, 2021; 2022 hb93, § 1, effective April 29, 2022.