

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
ex rel. PLUNDERBUND MEDIA, LLC
2206 Dixon Street
Delaware, Ohio 43015

CASE NUMBER

13-0596

Relator

V.

AN ORIGINAL ACTION

THOMAS P. CHARLES
DIRECTOR, OHIO DEPARTMENT OF PUBLIC SAFETY
1970 West Broad Street
Columbus, Ohio 43218

Respondent

COMPLAINT FOR WRIT OF MANDAMUS

Victoria E. Ullmann (0031468)
Attorney at law
Counsel for Relator
1135 Bryden Road
Columbus, Ohio 43205
(614)253-2692
Victoria_ullmann@hotmail.com



Relator, Plunderbund Media LLC (“Plunderbund”) states as follows:

1. This court has original jurisdiction of this action pursuant to Ohio Constitution Article 4.02 (B)(1)(b) and R.C. 149.43.

2. Plunderbund is a new media company based in Central Ohio. Through their blog Plunderbund.com they provide original reporting, analysis and editorial commentary on Ohio politics.

3. Thomas P. Charles is the director of the Ohio Department of Public Safety. He has had a lengthy career in law enforcement and investigation. He is the custodian of all records in issue here.

4. The Ohio Department of Homeland Security is part of the Department of Public Safety.

4. On August 14, 2012, Joseph Mismas, co-owner and managing editor of Plunderbund sent a public documents request to the legal department of the Department of Public Safety, requesting that they provide specific documents relating to the execution of their duties pursuant to the Ohio Public Documents Act, R.C. 149.43 et seq .

5. He requested copies of any investigation files regarding threats against the governor or his staff. Mismas tried in a variety of ways to obtain parts of the files or redacted file information in response to the agency’s denials of the documents.

6. R.C. 149.43 (B)(1) 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, a public office or person responsible for

public records shall make copies of the requested public record available at cost and within a reasonable period of time.”

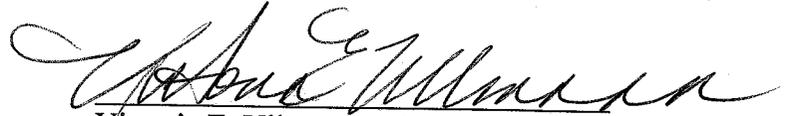
13. Legal counsel for the department refused to produce any records and denied any obligation to redact information based upon R.C. 149.433. The department claims that term “security” in this section allows them to conceal virtually any record that can be remotely connected with any security issue.

14. After the 9/11 attacks, the federal government established the Department of Homeland Security. R.C. 149.433 is based upon provisions of the Homeland Security Act which exempts critical infrastructure information for the federal Freedom of Information Act. 6 USC 133.

15. R.C. 149 provides that any exceptions to disclosure of public documents must be strictly construed against the agency. Although R.C. 149.433 is broader than the federal government required, it does not provide a blanket exemption to any document related to any type of security related matters within state government.

WHEREFORE: A preemptory writ of mandamus should issue forthwith requiring that all documents responsive to the request be produced, redacted if necessary. In the alternative, relator has set forth adequate proof of a violation for the court to schedule briefing for the alternative writ. Relator also prays the court to award statutory damages, costs and attorneys fees in this action since the failure to provide these documents is unreasonable and unsupportable.

Respectfully submitted,

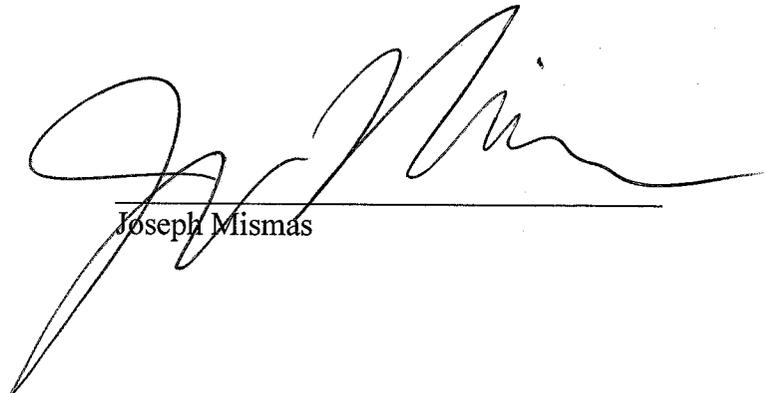
A handwritten signature in black ink, appearing to read "Victoria E. Ullmann". The signature is fluid and cursive, with a large initial "V" and "E".

Victoria E. Ullmann 0031468
Attorney for Plunderbund Media, LLC
1135 Bryden Road
Columbus, Ohio 43205
614-253-2692
Victoria_ullmann@hotmail.com

AFFIDAVIT OF JOSEPH MISMAS

Joseph Mismas, being duly sworn and cautioned, states as follows:

1. I am co-owner and managing editor of Plunderbund Media, LLC.
 2. I made a formal written public documents request to the Department of Public Safety on August 14, 2012. I requested any available documents from investigation files regarding threats against the governor.
 3. When I received a blanket denial from the agency, I attempted to clarify and limit the request to satisfy agency concerns.
 4. The agency continues to refuse to produce any responsive documents, claiming that even redacted copies of any investigation records about any threats against the governor can be withheld.
2. Attached are the true and accurate copies of my correspondence with the legal counsel's office of the Department of Public Safety.



Joseph Mismas

NOTARY

Sworn and subscribed before me, a notary public of the state of Ohio this 11 day of April, 2013.



Notary My commission does NOT
EXPIRE



Joseph Mismas <jmismas@gmail.com>

Record Request for Investigations Related to Threats Against Governor Kasich

1 message

Joseph <jmismas@googlemail.com>

Tue, Aug 14, 2012 at 1:31 PM

To: "Ralston, Anne" <arralston@dps.state.oh.us>

Lieutenant Ralston,

I am attempting to research the number of threats made against Governor Kasich since he's taken office and it's my understanding that the Patrol conducts investigations into such threats.

If possible, can you provide me with a count of the number of investigations you have conducted related to threats against the Governor (open and closed)?

I would also like to receive a copy of the investigations themselves. I am simply trying to determine the type of threat and whether it was considered credible or resulted in charges, so I do not need all associated witness statements, etc. Just the final version of the investigation report.

NOTE: If a single report is available or can be produced that provides this information in a single list format, that would be acceptable as well.

Thank you in advance for your assistance,

Joseph Mismas

(614) 365-0421

jmismas@gmail.com

Exhibit 1

- Administration
- Bureau of Motor Vehicles
- Emergency Management Agency
- Emergency Medical Services
- Office of Criminal Justice Services
- Ohio Homeland Security
- Ohio Investigative Unit
- Ohio State Highway Patrol



September 19, 2012

Via E-mail (jmismas@gmail.com)

Joseph Mismas

Re: August 14, 2012 Public Records Request

Dear Mr. Mismas:

This serves as a response to the above referenced request. The request was directed to the Ohio State Highway Patrol (OSP), and has been forwarded to me for a response. You have asked for copies of investigations conducted by the OSP related to threats against the Governor.

Out of concern for the safety of public officials, their families and those with whom they work, it has been determined that security records, such as detailed information on security, protective measures and procedures, personal threats and their analysis that you seek, are not public records under section 149.43 of the Revised Code. Security records are not subject to mandatory release or disclosure; therefore, the Department is withholding the records pursuant to R.C. 149.433(B).

If you have any questions regarding this matter or require further assistance, please do not hesitate to contact me. I can be reached by phone at 614.466.7014 or via e-mail at rrmathews@dps.state.oh.us.

Sincerely,



Robin R. Mathews
Associate Legal Counsel

cc: Lt. Anne Ralston, OSP
Jeff Maute, OSP

Exhibit 2

Mission Statement

"to save lives, reduce injuries and economic loss, to administer Ohio's motor vehicle laws and to preserve the safety and well being of all citizens with the most cost-effective and service-oriented methods available."

An Equal Opportunity Employer



Joseph Mismas <jmismas@gmail.com>

Re: August 14, 2012 Public Records Request

1 message

Joseph <jmismas@gmail.com>

Fri, Sep 21, 2012 at 9:57 AM

To: "Mathews, Robin" <rrmathews@dps.state.oh.us>

Cc: "Ralston, Anne" <arralston@dps.state.oh.us>, "Maute, Jeffery" <jmaute@dps.state.oh.us>

Ms. Mathews,

I am following up to make sure you received my last email responding to your denial of my record request. I have included the response below.

In case I wasn't clear, I am only asking for information on closed investigations of past threats and these do not constitute a security record.

Could you please confirm you received my email and are working on identifying responsive records?

Thank you again for your assistance.

Joe Mismas

Ms. Mathews,

Thank you for your response.

Regarding your denial, the exclusion for security records applies to things that would constitute current and ongoing security concerns. A closed investigation of a past threat does not constitute a security record as that is suggested in the file.

At minimum, I kindly ask that you disclose the "cover sheet" to the reports that indicates that a case was opened, the nature of the case, and the resolution while redacting any information that you believe could pose a security threat.

I also ask that you please provide records responsive to the initial portion of my request for "a count of the number of investigations you have conducted related to threats against the Governor (open and closed)".

I look forward to your response.

Joe Mismas

On Wed, Sep 19, 2012 at 10:04 AM, Mathews, Robin <rrmathews@dps.state.oh.us> wrote:

Please see the attached correspondence.

Exhibit 3

Robin R. Mathews

Associate Legal Counsel

Ohio Department of Public Safety

1970 West Broad Street

Columbus, Ohio 43223

rrmathews@dps.state.oh.us

www.publicsafety.ohio.gov

614-466-7014 (office)

614-752-6063 (fax)

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- Administration
- Bureau of Motor Vehicles
- Emergency Management Agency
- Emergency Medical Services
- Office of Criminal Justice Services
- Ohio Homeland Security
- Ohio Investigative Unit
- Ohio State Highway Patrol



October 12, 2012

Via E-mail (jmismas@gmail.com)

Joseph Mismas

Re: August 14, 2012 Public Records Request – Follow up Response

Dear Mr. Mismas:

This letter serves as a follow-up to your September 21, 2012 e-mail correspondence regarding the Department's response to your August 14, 2012 public records request. As previously indicated, the records you requested regarding threats made against the Governor are security records which are exempt from disclosure under section 149.43 of the Revised Code. Security records are not limited to open investigations. No assurances can be made that the release of documents regarding previously-made threats will not constitute a security risk in the future. Thus, the Department is withholding the records pursuant to R.C. 149.433(B).

Regarding your request for "a count of the number of investigations you have conducted related to threats against the Governor (open and closed)", there are no records responsive to your request.

If you have any questions regarding this matter or require further assistance, please do not hesitate to contact me. I can be reached by phone at 614.466.7014 or via e-mail at rmathews@dps.state.oh.us.

Sincerely,

Robin R. Mathews

Robin R. Mathews
Associate Legal Counsel

cc: Lt. Anne Ralston, OSP
Jeff Maute, OSP

Exhibit 4

Mission Statement

"to save lives, reduce injuries and economic loss, to administer Ohio's motor vehicle laws and to preserve the safety and well being of all citizens with the most cost-effective and service-oriented methods available."

An Equal Opportunity Employer

• **Public safety**

Joeph Mismas (jmismas@gmail.com)
4/08/13

To: Victoria Ullmann

After her first denial, I sent this follow up email:

Ms. Mathews,

Thank you for your response.

Regarding your denial, the exclusion for security records applies to things that would constitute current and ongoing security concerns. A closed investigation of a past threat does not constitute a security record as that is suggested in the file.

At minimum, I kindly ask that you disclose the "cover sheet" to the reports that indicates that a case was opened, the nature of the case, and the resolution while redacting any information that you believe could pose a security threat.

I also ask that you please provide records responsive to the initial portion of my request for "a count of the number of investigations you have conducted related to threats against the Governor(open and closed)".

I look forward to your response.

Joe Mismas



Joseph Mismas <jmismas@gmail.com>

RE: August 14, 2012 Public Records Request - Follow up Response

1 message

Mathews, Robin <rrmathews@dps.state.oh.us>

Wed, Oct 17, 2012 at 2:56 PM

To: "jmismas@gmail.com" <jmismas@gmail.com>

Cc: "Ralston, Anne" <arralston@dps.state.oh.us>, "Maute, Jeffery" <jmaute@dps.state.oh.us>

Mr. Mismas:

In response to your October 12, 2012 e-mail, please refer to R.C. 149.433(A)(3)(a) and 149.433(B).

Also, per your October 15, 2012 e-mail, attached is a copy of DPS 400.04 - Administration of Public Records Requests.

If you have any additional questions or require further assistance, please do not hesitate to contact me.

Robin R. Mathews

Associate Legal Counsel

Ohio Department of Public Safety

1970 West Broad Street

Columbus, Ohio 43223

rrmathews@dps.state.oh.us

www.publicsafety.ohio.gov

614-466-7014 (office)

614-752-6063 (fax)

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From: Joseph [mailto:jmismas@gmail.com]
Sent: Monday, October 15, 2012 10:30 AM
To: Mathews, Robin
Subject: Re: August 14, 2012 Public Records Request – Follow up Response

Robin,

In addition to the requested citation, can you also send me a copy of the current public record policy document for Public Safety and also for the Patrol if it is a separate document?

Thanks again for your assistance.

Joe

On Fri, Oct 12, 2012 at 12:41 PM, Joseph <jmismas@gmail.com> wrote:

Robin,

Can you please cite the specific section(s) of 149.433(A) you are using to deny my request?

Thank you,

Joe

On Fri, Oct 12, 2012 at 9:38 AM, Mathews, Robin <rrmathews@dps.state.oh.us> wrote:

Please see the attached correspondence.

Robin R. Mathews

Associate Legal Counsel

Ohio Department of Public Safety

1970 West Broad Street

Columbus, Ohio 43223

rrmathews@dps.state.oh.us

Victoria Ullmann (victoria_ullmann@hotmail.com)

11/13/12

To: rrmathews@dps.state.oh.us

From:

Victoria E. Ullmann
Attorney at law
1135 Bryden Road
Columbus, Ohio 43205
614-253-2692

Dear Ms. Mathews,

I represent Plunderbund and Joseph Mismas has asked me to contact you regarding his recent public documents request. Thank you for providing us with your policy and with the code sections you are relying on to refuse his request. Of course I do not know the actual content of the documents, but it seems that at least some of the requested documents would fall outside the security exception in R.C. 149.433. As you know, that section reads:

(3) "Security record" means any of the following:

- (a) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;
- (b) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism, including any of the following:
 - (i) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel;
 - (ii) Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies;

I also think that R.C. 149.43(11) is applicable to any document that contains security material that can be redacted to remove information that arguably fails under 149.433 to allow the remainder of the document to be produced:

"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." Nothing exempts security records under R.C. 149.433 from the requirement to redact information and I think you remain obligated to produce the documents with security information redacted if necessary.

Exhibit 7

Plunderbund asking for very limited information, just the content of the threat itself and whether it was considered credible at all by the officer who made that determination. It is not requesting information

about action taken in response to the threat in securing a public office or protecting an official, so (3)(a) is not applicable and neither is (b) (i) or (ii). If the threat is in writing, we would like to see a copy of the writing. By phone, simply the notes taken by the person who received the call and materials regarding whether an investigation was opened. If these files contain a summary sheet or cover sheet providing a short recitation of the issue that would also be responsive.

We appreciate the prompt responses you have made with regard to this issue, and I look forward to your prompt response to my request as well.

Yours truly,

Victoria E. Ullmann



- Administration
- Bureau of Motor Vehicles
- Emergency Management Agency
- Emergency Medical Services
- Office of Criminal Justice Services
- Ohio Homeland Security
- Ohio Investigative Unit
- Ohio State Highway Patrol



December 14, 2012

Via E-mail (jmismas@gmail.com)

Victoria E. Ullmann
Attorney at law
1135 Bryden Road
Columbus, Ohio 43205

Re: November 13, 2012 Correspondence (Mismas/Plunderbund Request)

Dear Ms. Ullmann:

Thank you for your letter of November 13, 2012 regarding Joseph Mismas' request for records. Unfortunately, your interpretation of the public records laws referenced in your letter is at odds with the applicability of R.C. 149.433(A)(3)(a) and R.C. 149.43(A)(11). Also, please note that Mr. Mismas has intertwined the concepts of "records request" and "information request." The public records laws only require production of records, not information.

Pursuant to R.C. 149.433(A)(3)(a), a security record includes any record *that contains information directly used for protecting or maintaining the security of a public office* against attack, interference, or sabotage (emphasis added.) Each of the requested records contains such information and is, therefore, a security record. While we appreciate your interest in closed threat cases, the assessment and disposition relative to each threat -- as each relates to the unique circumstances of a particular governor and his family -- would be indicative of the relative strengths and weaknesses of a particular governor's security position. Consequently, the release of such records would pose a significant risk, not only to Governor Kasich, but to his wife and children as well.

As previously indicated to Mr. Mismas, a security record is not a public record under section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section. R.C. 149.433(B). Because by definition each of the requested records, in its entirety, constitutes a security record and is exempt from disclosure, redaction is not applicable.

Exhibit 8

Mission Statement

"to save lives, reduce injuries and economic loss, to administer Ohio's motor vehicle laws and to preserve the safety and well being of all citizens with the most cost-effective and service-oriented methods available."

An Equal Opportunity Employer

If you have any additional questions regarding this matter or require further assistance, please do not hesitate to contact me. I can be reached by phone at 614.466.7014 or via e-mail at rrmathews@dps.state.oh.us.

Sincerely,

A handwritten signature in black ink that reads "Robin R. Mathews". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Robin R. Mathews
Associate Legal Counsel