



IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. OHIO DEMOCRATIC PARTY,

Relator,

v.

JOHN KASICH, Governor, State of Ohio and MARY TAYLOR, Lt. Governor, State of Ohio

Respondents.

: : : : Case No. 2014-1421 : : Original Action in Mandamus : : : : :

MOTION TO DISMISS OF RESPONDENTS GOVERNOR JOHN KASICH AND LIEUTENANT GOVERNOR MARY TAYLOR

Pursuant to S.Ct.Prac.R. 12.01, 12.04(A), and Civ.R. 12(B)(6), Respondents Governor John Kasich and Lieutenant Governor Mary Taylor, hereby move this Court to dismiss Relator’s petition for a writ of mandamus. This motion is more fully supported with the attached memorandum.

Respectfully submitted,

MICHAEL DEWINE (0009181) Ohio Attorney General

[Signature] RENATA Y. STAFF (0086932)\*

\*Counsel of Record

RYAN L. RICHARDSON (0090382)

Assistant Attorneys General Constitutional Offices Section 30 East Broad Street, 16th Floor Columbus, Ohio 43215 Tel: 614-466-2872 Fax: 614-728-7592 renata.staff@ohioattorneygeneral.gov ryan.richardson@ohioattorneygeneral.gov

Counsel for Respondents John Kasich and Mary Taylor

## MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION TO DISMISS

### I. INTRODUCTION

The law is clear: a public office has no duty to respond to public records requests that fail to identify the records sought with reasonable clarity and in the manner in which Respondents access their records. Contrary to this authority, Relator Ohio Democratic broadly asked Respondents Governor John Kasich and Lieutenant Governor Mary Taylor to provide *all* correspondence, written and electronic, between three people over a one-year time span. When responding to this ambiguous and overly broad request that failed to specify the records sought, Respondents notified Relator how to fashion a proper request that would enable the Governor's Office to search for and identify potentially responsive records and invited the requester to revise or clarify the request. To date, Relator has not responded to this invitation. Instead, Relator filed this mandamus action. Because this Court's precedent confirms as a matter of law that Relator failed to make a proper public records request, this Court should dismiss its complaint for a writ of mandamus.

### II. STATEMENT OF FACTS

Instead of negotiating to clarify the specific records it is seeking, Relator Ohio Democratic Party initiated this premature mandamus action to compel Governor John Kasich and Lieutenant Governor Mary Taylor to comply with its public records request which lacked sufficient clarity.

Specifically, Relator sent a public records request by email to the Governor's Office requesting *all* "[c]orrespondence, whether written or electronic, between Lt. Governor Mary Taylor and former Chief of Staff Laura Johnson from June 1, 2013 to June 6, 2014" and all "[c]orrespondence, whether written or electronic, between Lt. Governor Taylor's former Chief of Staff Laura Johnson and Heather Brandt from June 1, 2013 to June 6, 2014." (Complaint, Exh.

A.) In the same request, Relator asked for the “[o]fficial schedule for Lt. Governor Mary Taylor from June 1, 2013 to June 9, 2014.” (*Id.*)

In response, Respondents acknowledged the request and indicated that the request had been forwarded for processing and review, on June 10, 2014. (Complaint, Exh. B.) Upon receiving an inquiry from Relator regarding the status of its request, Respondents provided the official schedule responsive to the third part of Relator’s request. (Complaint, Exhibits C, D.) In a cover letter provided with these records, Respondents explained that the remainder of Relator’s request lacked clarity which left Respondents “unable to identify the exact records” sought by Relator. (Complaint, Exh. D.) To aid Relator in fashioning a proper request, Respondents invited Relator to specify the “subject matter of the [request for] correspondence” and provided a website link directing Relator to the online records retention schedule database maintained by the Ohio Department of Administrative Services. (*Id.*)

Rather than identifying a specific subject matter or topic of the correspondence sought by Relator to enable Respondents to identify the records responsive to Relator’s request, Relator asserted that the correspondence it was asking for included “both the category of ‘Correspondence, Executive’ and ‘Correspondence General’ as outlined” in Respondents’ retention schedule along with “any written letter, memorandum, or e-mail (including from/to official email accounts issued by the State of Ohio or personal e-mail accounts that have been used by the individual to conduct official state business).” (Complaint, Exh. E.) Upon receiving this response, the Governor’s Office again explained that it could not identify the specific existing records sought by Relator “without [Relator] providing any clarity as to the subject matter or topic of the correspondence sought.” (Complaint, Exh. H.) Again, Respondents extended to Relator the opportunity to “work with [Relator] to produce a request that contains

the requisite clarity necessary for the office to identify the actual, existing records [sought].” (*Id.*) Instead, Relator initiated this mandamus action.

### **III. LAW AND ARGUMENT**

#### **A. Standard of Review**

A motion to dismiss for failure to state a claim upon which a court can grant relief challenges the sufficiency of the complaint itself. *Volbers-Klarich v. Middletown Mgmt, Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. A court must accept the factual allegations of the complaint as true and “the plaintiff must be afforded all reasonable inferences possibly derived therefrom.” *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). “Additionally, in order to dismiss a complaint under Civ. R. 12(B)(6), it must appear beyond doubt that relator can prove no set of facts warranting relief.” *State ex rel. Edwards v. Toledo City Sch. Dist. Bd. of Educ.*, 72 Ohio St.3d 106, 108, 1995-Ohio-251, 647 N.E.2d 799.

#### **B. Relator’s Request for a Writ of Mandamus Must Fail.**

It is well established that relief in the form of mandamus is extraordinary relief. *State ex rel. DeDonno v. Mason*, 128 Ohio St.3d 412, 2011-Ohio-1445, 945 N.E.2d 511, ¶ 2. In order for a writ of mandamus to issue, a relator must establish three elements: (1) the relator has a clear legal right to the requested relief; (2) the respondent is under a clear legal duty to perform the requested act; and (3) the relator has no plain and adequate remedy at law. *State ex rel. Van Gundy v. Indus. Comm’n.*, 111 Ohio St.3d 395, 2006-Ohio-5854, 856 N.E.2d 951, ¶ 13. However, a relator in a statutory public records mandamus action need not prove a lack of adequate remedy at law. *State ex rel. Gaydosh v. Twinsburg*, 93 Ohio St.3d 576, 580, 757 N.E.2d 357 (2001). Here, Relator’s complaint must be dismissed because it cannot establish the two essential requirements for a writ to issue.

Respondents have no clear duty to provide records in response to a request that lacks reasonable clarity as to the records sought nor does Relator have a clear legal right to obtain documents in response to such a scattershot request. This Court has consistently held that mandamus will issue to compel a public office to produce records only in response to a proper public records request, that is, one that describes the records sought with reasonable clarity. *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 17; *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 29 (internal citations omitted). And a public office has no duty to provide records in response to a request that lacks clarity as to the items sought. *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 19; *see also* R.C. 149.472(B)(2).

Relator's request, which is not limited to a particular subject matter or topic and covers a time span of over one year, is unreasonably nonspecific and ambiguous as confirmed by this Court's precedent. For example, the relator in *State ex rel. Glasgow v. Jones* requested, among other records, "[a]ll e-mails...[and] [a]ll written correspondence sent or received by [the Respondent State Representative Jones] in [her] capacity as a State Representative from the date of [her] service as such Representative...including, but not limited to, correspondence having as its subject matter House Bill 151 or discussions that led to or have any connection whatsoever with the introduction of Substitute House Bill 151." 2008-Ohio-4788, ¶¶ 5-7. At the time of the request, Representative Jones had been in office close to six months. *Id.* at ¶ 4. Here, as in *Glasgow*, the requester does not "identify with reasonable clarity the records at issue." *Id.* at ¶¶ 17-19. To be sure, Relator's request, which seeks over a year's worth of records and is not narrowed by topic or subject matter, is at least as broad as the request this Court found improper in *Glasgow*.

Moreover, Relator's claim that it "merely requested emails" from Respondents is incorrect and misleading. (Complaint, ¶¶ 18-21.) In response to a letter from Respondents requesting clarification of the request, Relator explained that its request for "correspondence" includes "both the category of 'Correspondence, Executive' and 'Correspondence General' as outlined" in Respondents' retention schedule along with "any written letter, memorandum, or e-mail (including from/to official email accounts issued by the State of Ohio or personal e-mail accounts that have been used by the individual to conduct official state business)." (Complaint, Exh. E.) Rather than clarifying or narrowing their request to enable the Governor's Office to search its records by topic or subject matter as it was invited to do, Relator reiterated its improper request for a year's worth of correspondence between three people.

Contrary to Relator's argument, R.C. 149.43 does not impose a duty on public offices to organize records in any particular manner, or to conform the manner in which it organizes its records to satisfy a particular public records requester. Rather, public offices are required to "organize and maintain public records in a manner that they can be made available for inspection or copying" in response to a proper public records request. R.C. 149.43(B)(2). This obligation, however, does not create a duty requiring a public office to use a particular organizational system. *State ex rel. Bardwell v. City of Cleveland*, 126 Ohio St.3d 195, 2010-Ohio-2367, 931 N.E.2d 1080; *State ex rel. Zauderer*, 62 Ohio App.3d 752, 755, 577 N.E.2d 444 (10th Dist. 1989).

As this Court has clearly held, public offices are not required to maintain emails or any correspondence files so that they can be retrieved by sender and recipient status. *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶¶ 28-32. A public office complies with its duty to maintain public records if

information reasonably identified by the requester is retrievable. *See State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 756, 577 N.E.2d 444 (10th Dist. 1989). As staff for the Governor's Office advised Relator on numerous occasions, Respondents' correspondence records may be retrieved by subject matter or topic identified in the public records request. (Complaint, Exhibits D, H.) The Governor's Office does not have duty to organize or retrieve records in the manner that Relator demands. Relator therefore does not have a clear legal right have its request fulfilled as posed to the Governor's Office, nor does the Governor's Office have a clear legal duty to provide the records Relator seeks.

Further, the Governor's Office fulfilled its negotiation obligations under R.C. 149.43. If a public office denies a public records request as ambiguous or lacking sufficient clarity, the public office is required to consult with the requester in order to permit the requester to revise the request. R.C. 149.43(B)(2). On a number of occasions, the Governor's Office staff responded to Relator's request, informing Relator that they could not fulfill its request as written, explaining that one way of improving specificity would be to identify the subject matter of desired communications, and inviting the requester to revise and clarify its request. (Complaint, Exhibits D, H.) Relator, however repeatedly failed to pursue the opportunity to work with the Office's staff to fashion a proper public records request. Instead, Relator characterized the Governor's Office initial request for clarification as "bad faith," and responded to the Office's reaffirmed commitment to aid in the construction of a proper request with this premature mandamus action. (Complaint, Exhibits D, G, H.)

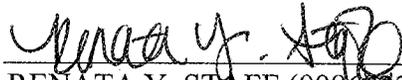
Relator does not have a clear legal right to the relief it requests, nor does the Governor's Office have a clear legal duty to perform it, because the Governor's Office fulfilled its obligations under R.C. 149.43 with respect to Relator's public records request. Respondents

responded to Relator's improper public records request and attempted to confer and negotiate with Relator to revise its improper request in compliance with R.C. 149.43(B)(2). Accordingly, Relator's action in mandamus must fail and this Court must dismiss its complaint.

**CONCLUSION**

For these reasons, Respondents Governor John Kasich and Lieutenant Governor Mary Taylor respectfully request that this Court dismiss Relator's Complaint.

Respectfully submitted,  
MICHAEL DEWINE (0009181)  
Ohio Attorney General



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RENATA Y. STAFF (0086922)\*

*\*Counsel of Record*

RYAN L. RICHARDSON (0090382)  
Assistant Attorneys General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: 614-466-2872 Fax: 614-728-7592  
renata.staff@ohioattorneygeneral.gov  
ryan.richardson@ohioattorneygeneral.gov

*Counsel for Respondents  
John Kasich and Mary Taylor*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Motion to Dismiss of Respondents Governor John Kasich and Lieutenant Governor Mary Taylor* was served by first class mail via the U.S. Postal Service on September 8, 2014, upon the following:

N. Zachary West  
Ohio Democratic Party  
340 East Fulton Street  
Columbus, Ohio 43215

  
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RENATA Y. STAFF (0080922)  
Assistant Attorney General