

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

State ex rel David Esrati
100 Bonner St.
Dayton, OH 45410

Relator,

vs.

Dayton Metro Library
120 S. Patterson Blvd
Dayton, OH 45402

and

Tim Kambitsch,
Executive Director of Dayton Metro Library :
120 S. Patterson Blvd
Dayton, OH 45402

Respondents.

No.

Complaint in Mandamus

This action is brought in the name of the State of Ohio on relation of David Esrati who is petitioning this Court for a writ of mandamus directing Respondents, Tim Kambitsch and the Dayton Metro Library to comply with their legal obligations, pursuant to the Ohio Public Records Act, to timely provide Relator requested public records.

Introduction

1. Scrutiny of government activity is “absolutely essential to the proper working of a democracy.” *State ex rel. Whio-Tv-7 v. Lowe*, 77 Ohio St.3d 350, 355, 1997-Ohio-271, 673 N.E.2d 1360. To prevent government officials and agencies from hiding their

activities from the public, the Ohio legislature enacted the Ohio Public Records Act, R.C. 149.43. The purpose of the Act is to “expose government activity to scrutiny.” *Id.*

Jurisdiction

2. “Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio's Public Records Act.” *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274, ¶ 16.
3. This Court has original jurisdiction over mandamus actions pursuant to Ohio Revised Code Section 149.43(C)(1)(b).

Parties

Relator David Esrati

4. Relator David Esrati (“Esrati”) is a resident of the City of Dayton, Ohio.
5. Esrati operates a prominent blog, esrati.com.
6. Through esrati.com, Esrati authors and publishes articles that cover a variety of topics. Some of the topics covered are politics, crime, education, and economic development. The vast majority of the articles have a local focus.
7. Esrati has published more than 2,690 articles on esrati.com, and the page receives, on average, more than 900 unique visitors per day.
8. On August 19, 2017, Esrati was ejected from the Main Branch of the Dayton Metro Library by security guards that were working for Dayton Metro Library.
9. The ejection of Esrati was captured by the Dayton Metro Library’s Main Branch video surveillance system.
10. The recordings of Esrati’s ejection are the public record at issue in this case.

Respondent Dayton Metro Library

11. Respondent Dayton Metro Library (“DML”) is organized as a county library under Chapter 3375 of the Ohio Revised Code.
12. DML is a free public library for the residents of Montgomery County, Ohio.
13. DML operates 19 branch locations within Montgomery County, Ohio.
14. The “Main Branch” of DML is located at 215 E. Third Street, Dayton, Ohio 45402.

Respondent Tim Kambitsch

15. Tim Kambitsch (“Kambitsch”) is the Executive Director of DML.
16. Kambitsch has served as DML’s executive director since 2001.
17. Kambitsch is aware of Esrati’s activism and of Esrati’s efforts on esrati.com.

Factual Allegations

18. Relator restates the allegations in all preceding paragraphs as if fully restated herein.
19. On August 19, 2017, Esrati, on his own behalf, verbally requested public records from Kambitsch in his role as Executive Director of DML. Specifically, Esrati requested a copy of the video surveillance recording of his ejection from the Main Branch of DML on August 19, 2017 (hereinafter “First Request”).
20. Kambitsch acknowledged receipt of the First Request in an email on August 19, 2017.
21. On August 31, 2017, counsel for Relator, on behalf of Relator, requested public records from DML. The public records requested sought, among other things, the “security camera footage” of Esrati’s ejection from the Main Branch on August 19, 2017. (hereinafter “Second Request”).
22. Kambitsch acknowledged receipt of the Second Request via email on August 31, 2017.

23. On September 19, 2017, Ashley Orr (an administrative assistant for DML) emailed counsel for Relator and indicated that DML would not be providing the requested surveillance video. Specifically, Ms. Orr asserted that the requested video footage was a “library record” and/or “patron information” within the meaning of Ohio Revised Code Section 149.432, and that it was, therefore, not subject to release under the Ohio Public Records Act.
24. On September 20, 2017, counsel for Relator emailed counsel for Respondent DML, Assistant Prosecutor Adam Laugel, and explained to Mr. Laugel that the requested video was not a “library record” or “patron information” within the meaning of Section 149.432.
25. On September 27, 2017, counsel for Respondent, Mr. Laugel, emailed counsel for Relator and requested that any discussions regarding the public records request be postponed because Esrati and Kambitsch were in the process of arraigning a meeting to discuss Esrati’s ejection from DML Main Branch. Counsel for Relator agreed to postpone any further discussions about the public records requests.
26. Kambitsch reviewed the requested surveillance recordings and determined that they irrefutably contradicted written reports that were produced by the security guards that ejected Esrati from the DML Main Branch.
27. After failed negotiations regarding Esrati’s ejection from DML’s Main Branch, Esrati renewed his public records request for the video surveillance footage of his ejection.
28. On November 15, 2017, Esrati emailed Mr. Kambitsch and made a third public records request for the video footage of his ejection on August 19, 2017 (hereinafter, “Third Request”). Counsel for Respondent DML, Mr. Laugel, also received the Third Request.

29. On November 20, 2017, counsel for Respondent DML, Mr. Laugel, emailed a copy of a letter to Esrati indicating that DML would not provide the requested public record because release of the video was allegedly prohibited by Section 149.432 of the Ohio Revised Code. Exhibit A.
30. The records sought in the First Request, Second Request, and Third Request (collectively, the “Requests”) constitute public records as defined in Section 149.43 of the Ohio Revised Code.
31. The records sought in the Requests are not subject to any exemption, in whole or in part, from disclosure under Section 149.43 of the Ohio Revised Code.
32. The records sought in the Requests are not subject to any exemption, in whole or in part, from disclosure under Section 149.432 of the Ohio Revised Code.
33. The records sought in the Requests were created or received by or come under the jurisdiction of DML and/or Kambitsch.
34. The records sought in the Requests serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of DML.
35. To date, neither DML nor Kambitsch have produced the video recording that is the subject of this mandamus action.

Claim for Writ of Mandamus

36. Relator restates the allegations in all preceding paragraphs as if fully restated herein.
37. In construing Ohio’s Public Records Act, Ohio courts must “construe R.C. 149.43 liberally in favor of broad access and resolve any doubt in favor of disclosing records.” *State ex rel. Plain Dealer Publishing Co. v. City of Cleveland*, 106 Ohio St.3d 70, 2005-Ohio-3807, 831 N.E.2d 987, ¶ 20.
38. “Public record” means records kept by any public office. O.R.C. 149.43(A)(1).

39. "Public office" means "any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." O.R.C. 149.011(A).
40. The Ohio Public Records Act mandates that "all public records responsive to [a public records] request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." R.C. 149.43(B)(1).
41. The Ohio Public Records Act mandates that "a public office or person responsible for public records shall make copies of the requested public record available at cost within a reasonable period of time." R.C. 149.43(B)(1).
42. The Ohio Public Records Act mandates that "[i]f 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." R.C. 149.43(B)(1).
43. Respondents have violated their legal obligations under the Ohio Public Records Act, including the foregoing provisions, requirements, and mandates by failing to produce all of the public records sought in the Requests.
44. In the alternative, Respondents have violated their legal obligations under the Ohio Public Records Act, including the foregoing provisions, requirements, and mandates, by failing to redact exempt information from the public records, and then produce all of the non-exempt public records sought in the Requests.

The Records Sought in the Requests are not a Library Record or Patron Information

45. In denying the Requests, Respondents have relied on Section 149.432 of the Ohio Revised Code.

46. Section 149.432 prohibits the disclosure of “library records” and “patron information” unless certain conditions are present.
47. However, the public records sought in the Requests are not a “library record” or “patron information” as defined in Section 149.432.
48. Section 149.432(A)(2) defines “library record” as “a record in any form that is maintained by a library and that contains any of the following types of information:
 - (a) Information that the library requires an individual to provide in order to be eligible to use library services or borrow materials;
 - (b) Information that identifies an individual as having requested or obtained specific materials or materials on a particular subject;
 - (c) Information that is provided by an individual to assist a library staff member to answer a specific question or provide information on a particular subject.”
49. “Patron information” means “personally identifiable information about an individual who has used any library service or borrowed any library materials. R.C. 149.432(A)(3).
50. Because of the nature of video recordings, and the nature of library records and patron information, the recordings sought in the Requests cannot contain library records or patron information.

Writ of Mandamus is Appropriate

51. Respondents have failed to comply with their legal obligations and duties under the Ohio Public Records Act.
52. Relator has a clear legal right to inspect the requested public records and to copies of the requested public records.

53. Respondents have a clear legal duty to promptly make the requested records available to Relator for inspection and copying.
54. Relator has no adequate remedy in the ordinary course of law and the Ohio Public Records Act specifically provides for the issuance of a writ of mandamus to compel a public office or the person responsible for the requested public records to comply with the legal obligations under the Ohio Public Records Act.
55. There is no legally valid excuse for the continued refusal of Respondents to provide the public records requested in the Requests.

Wherefore, Relator requests judgment in their favor and requests that the Court:

- (1) Issue a Writ of Mandamus compelling Respondent DML to provide the video recordings sought in the Requests to Relator;
- (2) Issue a Writ of Mandamus compelling Respondent Kambitsch to provide the video recordings sought in the Requests to Relator;
- (3) Award Relator their court costs and reasonable attorneys fees associated with bringing this action, including statutory damages; and
- (4) Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,



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Exhibit A



MATHIAS H. HECK, JR.
Prosecuting Attorney

DEBRA B. ARMANINI
First Assistant
Prosecuting Attorney

APPELLATE DIVISION
Andrew T. French, Chief

CIVIL DIVISION
Mary E. Montgomery, Chief

CRIMINAL DIVISION
Leon J. Daldoro, Chief

Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney

November 20, 2017

DIVERSION DIVISION
Steven A. Espy, Director

FRAUD AND ECONOMIC
CRIMES UNIT
Ward C. Barronette,
Supervising Attorney

JUVENILE DIVISION
John A. Bruns, Chief

VICTIM/WITNESS DIVISION
Sandra M. Hunt, Director

David Esrati
david@electresrati.com

Re: Response to Public Records
Request, Dated November 15, 2017

Dear Mr. Esrati:

This letter is in response to your Public Records Request which was emailed to Mr. Tim Kambitsch, among others, dated November 15, 2017, seeking "all surveillance video of the actions of [G4S] guards against [you] on August 19, 2017."

Provided with this letter is the Dayton Metro Library ("DML") Digital Video Security Cameras Policy. The DML safeguards digital video images using the same protections afforded other library records covered in Section 149.432 of the Ohio Revised Code. Archived images are treated the same as a library record, and are only released following the procedures outlined in the Confidentiality of Library and Patron Records Policy, approved by the Board of Trustees on September 19, 2000. The Confidentiality of Library and Patron Records Policy states as follows:

The following resolution was adopted by the Board of Trustees of September 19, 2000 by unanimous vote:

Whereas, the Board of Library Trustees of the Dayton Metro Library specifically recognizes that its circulation and registration records are confidential in nature; and

Whereas, the Board of Library Trustees of the Dayton Metro Library adopted a formal resolution so stating this policy on August 19, 1970 with a revision on June 17, 1981; and

Whereas, the Board of Library Trustees of the Dayton Metro Library supported the passage of HB 389, "Nondisclosure of Library Records and Patron Information" introduced in the Ohio House of Representatives on July 21, 1999; and

Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney

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Whereas, HB 389, as amended, was passed by both the Ohio House and Senate and signed into law by the Governor on July 6, 2000 to become effective October 5, 2000; now

Therefore, Be It Resolved, that the Board of Library Trustees of the Dayton Metro Library reaffirms its position in support of the confidentiality of library records and patron information; and

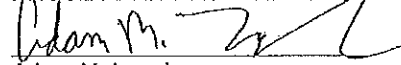
Be It Further Resolved, that such records shall not be made available to any individual, organization, agency, or state, federal or local government except in the situations specifically delineated in Section 149.432(B)(1 through 5) of the Ohio Revised Code; and

Be It Further Resolved, that all Staff Members of the Dayton Metro Library be so advised of this Policy and the exceptions contained in Section 149.432(B)(1 through 5) of the Ohio Revised Code.

Per Section 149.432(B)(2) of the Ohio Revised Code, your request does not meet the criteria required for release of these records.

Very truly yours,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY



Adam M. Laugle
Assistant Prosecuting Attorney
937-225-5781