

IN THE COURT OF APPEALS FOR LUCAS COUNTY, OHIO
SIXTH APPELLATE DISTRICT

OHIO FILED
COURT OF APPEALS
2012 JUL 11 A 11:07

THE STATE OF OHIO, *ex rel.* THE
TOLEDO BLADE CO.,
541 North Superior Street
Toledo, OH 43660,

COMMON PLEAS COURT
BERNIE GUILTER
CLERK OF COURTS

Relator,

Case Number:

- vs -

THE CITY OF TOLEDO, OHIO,
an Ohio municipal corporation,
by its Law Director,
Adam Loukx
One Government Center
Suite 2250
Toledo, OH 43604

ORIGINAL ACTION IN MANDAMUS
(Public Records, R.C. 149.43)

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Respondent.

Counsel for Relator

COMPLAINT FOR AN ORIGINAL WRIT OF MANDAMUS

JURISDICTION

(1) This is an original action for a writ of mandamus, as well as for ancillary relief, compelling the Respondent, as the public office or person responsible for certain public records, to comply with its obligations under the Ohio Public Records Act, R.C. 149.43(B) ("the Act"), to make the records available for inspection and copying by Relator. In violation of its obligations, Respondent has failed to promptly prepare and make the records available notwithstanding

repeated requests by Relator and by counsel on Relator's behalf that they do so. This Court has jurisdiction of the action under Article IV, section 3(B), of the Constitution of Ohio and under R.C. 149.43(C) and 2731.02.

PARTIES

(2) Relator, The Toledo Blade Co. ("The Blade"), is an operating division of Block Communications, Inc., a corporation organized under the laws of the State of Ohio. The Blade is engaged in the publication of a daily newspaper of general circulation. In this enterprise, The Blade employs, among others, reporters and editors who act on behalf of the The Blade and on behalf of the general public in gathering information by various means, including the inspection of public records, as a basis for publication of information that affects the public interest and informs the public about matters of public interest.

(3) Respondent, the City of Toledo, is a municipal corporation organized and existing under the laws of and as a political subdivision of the State of Ohio. Respondent is a "public office" within the meaning of the Act and as that term is defined by R.C. 149.011(A) ("Public office' includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government."). Further, Respondent is required to maintain and preserve the public records in its possession, custody, or control, R.C. 149.351, and is therefore the "person responsible for" the records it holds within the meaning of the Act. As the public office and as the person responsible for the public records that it holds, Respondent is obligated under the Act to promptly prepare such records and make them available for inspection and copying upon request. R.C. 149.43(B).

BACKGROUND AND FACTS

(4) As part of carrying out its responsibilities for law enforcement and public safety within its territorial jurisdiction, Respondent maintains a municipal police force pursuant to its charter and ordinances. The principal offices of Respondent's police force are maintained at The Safety Building, 525 North Erie Street, Toledo, Ohio.

(5) Taylor Dungjen, a staff writer employed by The Blade, while lawfully on the premises of The Safety Building, was told on at least three occasions by three different officers – two command and one patrol officer – that the Toledo Police Department maintains a “gang territories map” or a “gang boundaries map” (the “map”). The officers told Dungjen that the map was hanging on a wall in the Safety Building and is also maintained electronically in the Department's computer system.

(6) On or about June 25, 2012, acting as an employee of and on behalf of Relator, Dungjen orally requested that Respondent permit her to inspect the map during reasonable business hours. These requests were directed to Sergeant Joseph Heffernan of the Toledo Police Division as the party responsible for inspection-and-copying requests within Respondent's police force. On June 25, 2012, Sergeant Heffernan informed Dungjen that the map would not be made available for inspection or copying because it is an “intelligence piece we're using to do our enforcement; it's actively being used.”

(7) After this initial denial, Relator renewed its request to Respondent that Respondent promptly make the map available for inspection and copying. Following discussions, Respondent's Law Director on July 10, 2012 confirmed that Respondent would not make the map available for inspection and copying. The stated ground for this refusal was the claim that the map

is a “confidential law enforcement investigatory record” and thus exempt from disclosure pursuant to R.C. 149.43(A)(1)(h) & (2).

THE PUBLIC RECORD STATUS OF THE MAP

(8) The map is a document created or received by or coming under the jurisdiction of Respondent that serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of Respondent and of Respondent’s municipal police force. The map is a “public record” within the meaning of the Act, R.C. 149.43(A)(1).

(9) The map is not a “confidential law enforcement investigatory record” within the meaning of the Act and is therefore not exempted from disclosure under the Act.

(10) First, the map is or appears to be a compilation based on ongoing monitoring of gang activity within the City. For that reason, the map cannot be a “confidential law enforcement *investigatory* record” within the meaning of R.C. 149.43(A)(1)(h).

(11) Second, the map is relates to and is the product of a general law-enforcement initiative, rather than being a part of a specific investigation into specific acts of criminal conduct. For that reason, it is not and cannot be a “confidential law enforcement investigatory record” within the meaning of R.C. 149.43(A)(a)(h) and 149.43(A)(2).

(12) Third, there is no probability, much less the statutorily required “high probability,” that release of the map for inspection and copying would result in the disclosure of the identity of any person, whether an uncharged suspect or a confidential witness or informant. R.C. 149.43(A)(2)(a) & (b). Nor is there any probability, much less the statutorily required “high probability,” that release of the map for inspection and copying would endanger the life of any law enforcement personnel, crime victim, witness, or confidential informant. R.C. 149.43(A)(2)(d).

And there is no probability, and certainly not the statutorily required “high probability,” that release of the map for inspection and copying would reveal any specific confidential investigatory techniques or specific investigatory work product. R.C. 149.43(A)(2)(c).

(13) Even if some portions of the map or some of the information contained therein does or would constitute information otherwise exempt from public disclosure under the Act, Respondent has refused Relator’s request for inspection and copying without making any effort to redact those portions of the map or of the information contained therein that Respondent claims to be exempt from disclosure.

THE PUBLIC INTEREST

(14) The stated subject matter of the map (the distribution of “gang activity” within the territory of the City of Toledo) is a matter of substantial public interest and would be so as a general matter. It is all the more a subject of great public interest and concern due to recent significant increases in the frequency of criminal activity within the City that have been attributed by Respondent’s officers and employees to the conduct of criminal gangs. Both as citizens and as residents, the people of the City of Toledo have a deep, crucial, and abiding interest in monitoring the behavior of public officials in maintaining public safety in the City as a whole and in the City’s various neighborhoods.

(15) Moreover, the geographic distribution of such “gang activity” within the City is a matter of great and immediate public concern due to the recent and highly publicized activities of Respondent’s officers and employees in re-allocating police resources within the City. These activities, which include controversial plans for the closure of at least one district police station,

have been made at least in part purportedly on the basis of Respondent's assessments of the relative volumes of criminal activity, including "gang activity," within different areas of the City.

(16) Well-informed public assessment of the wisdom and soundness of these decisions will of necessity be substantially enhanced by the public availability of full information about the extent and geographic distribution of criminal activity within the City. The availability of full information would likewise enhance the public's ability to hold the relevant public officials accountable for their conduct in carrying out their responsibilities. To the extent that information of the character set forth in the map is available for public review, and to the extent that it is consistent with official explanations regarding the need for the police-resource re-allocations, the public will be assured that Respondent's affairs are being conducted competently and on the basis of actual public need. And, to the extent that the information set forth in the map is inconsistent with public explanations for the resource re-allocations, the public will be afforded the opportunity to take appropriate corrective action. In either event, the benefit to the public will be undeniable.

CLAIM FOR RELIEF

(17) The failure and refusal of Respondent to make the map available for inspection by Relator and the further failure and refusal of Respondent to make copies of the map available to Relator constitute violations of Respondent's obligations under the Act. R.C. 149.43(B)(1). The failure and refusal of Respondent to make the map available for inspection and copying with the purportedly exempt portions or information redacted likewise constitute violations of Respondent's obligations under the Act. R.C. 149.43(B)(1).

(18) Relator is a person aggrieved by the conduct of Respondent in violation of the Act.

WHEREFORE, Relator prays

(a) that this Court issue a writ of mandamus directing Respondent (i) to make the above-described map available for inspection by Relator promptly and without delay, and to do so at all times in response to future request, and (ii) to provide Relator with a copy of copies of the map at cost; and and to do so at all times in response to future requests;

(b) that, in any event, this Court award to Relator its costs of suit including its attorney fees;

(c) that this Court award to Relator statutory compensatory damages in the amount of \$100 per day for each record or class of records demanded by Relator, such damages to accrue from the date of the filing of this action until such time as Respondent makes the record or records available to Relator for inspection and copying;

(d) that the Court grant such other relief as is appropriate.



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Praecipe

To the Clerk:

In accordance with Rule 6 of the Sixth District Court of Appeals Local Rules, please serve the Complaint in this action by certified mail to the respondent, in care of the Adam Loukx, Law Director, One Government Center, Suite 2250, Toledo, OH 43604.

Mark Byers