

IN THE SUPREME COURT OF OHIO

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

Relator,

- vs -

Case Number:

14-0160

RANDALL J. MEYER,
in his official capacity as the Inspector
General of the State of Ohio,
and
THE OFFICE OF THE INSPECTOR
GENERAL OF THE STATE OF OHIO,
and
THE OFFICE OF THE DEPUTY
INSPECTOR GENERAL FOR THE
BUREAU OF WORKERS'
COMPENSATION AND THE
INDUSTRIAL COMMISSION,

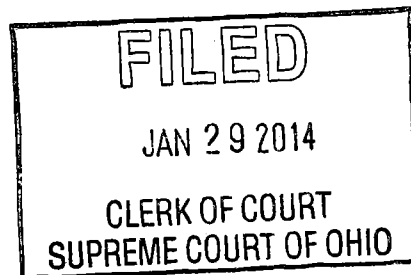
30 East Broad Street, Suite 2940
Columbus, OH 43537,

Respondents.

ORIGINAL ACTION IN MANDAMUS

COMPLAINT FOR AN ORIGINAL WRIT OF MANDAMUS

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JURISDICTION

(1.) This is an original action for a writ of mandamus, as well as for ancillary relief, compelling the Respondents as the public office or person or persons responsible for the preparation of certain public records to comply with their obligations under Ohio law to prepare

the records and hold them available for public inspection and copying. In violation of their obligations, respondents have failed to prepare a statutorily required detailed report of an investigation conducted by the Respondent Office of the Inspector General, or if they have prepared the report they have failed to promptly make the report available for inspection and copying notwithstanding requests by Relator and on Relator's behalf that they do so.

(2) Moreover, and separately, Respondents have failed to make available for inspection and copying the report of a statutorily required "fiduciary review" of certain State investments, again notwithstanding requests by Relator and on Relator's behalf that they do so.

JURISDICTION

(3) This Court has jurisdiction of the action under Article IV, section 2, of the Constitution of Ohio, and under R.C. 149.43(C) and 2731.02.

PARTIES

(4) 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 principally engaged in the publication of a 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.

(5) Respondent Randall J. Meyer is the duly appointed Inspector General of the State of Ohio; he is sued in his official capacity.

(6) Respondent the Office of the Inspector General of the State of Ohio is an office of the executive branch of the State of Ohio created by R.C. 121.48 and having powers and obligations as created and specified by R.C. 121.41 through 121.53 and other laws. Among those powers and duties are the “investigat[ion] of the management and operation of state agencies *** in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.” R.C. 121.42(A).

(7) Respondent the Office of the Deputy Inspector General for Bureau of Workers’ Compensation and Industrial Commission is an office within the Respondent Office of the Inspector General created by R.C. 121.52 and having the same powers and duties regarding matters concerning the Bureau of Workers’ Compensation and the Industrial Commission as those specified in R.C. 121.42, 121.43, and 121.45 for the Respondent Inspector General.

(8) Among the statutory obligations of each of the Respondents is the duty to “[p]repare a detailed report of each investigation that states the basis for the investigation, the action taken in furtherance of the investigation, and whether the investigation revealed that there was reasonable cause to believe that a wrongful act or omission had occurred. If a wrongful act or omission was identified during the investigation, the report shall identify the person who committed the wrongful act or omission, describe the wrongful act or omission, explain how it was detected, indicate to whom it was reported, and describe what the state agency in which the wrongful act or omission was being committed is doing to change its policies or procedures to prevent recurrences of similar wrongful acts or omissions.” R.C. 121.42(E). Each such report, once completed, is a public record subject to public inspection and copying under the Public Records Act (R.C. 149.43). R.C. 121.44(A).

FACTS

(9) As described by this Court's decision in *State ex rel. The Toledo Blade Co. v. The Ohio Bureau of Workers' Compensation, et al.*, 106 Ohio St. 3d 113, 2005-Ohio-3549, from 1998 until May 2005, the Bureau of Workers' Compensation engaged in a program of investing trust funds in rare coins through two limited-liability companies controlled by Thomas Noe.

(10) Following investigations and reporting by Relator into the character and extent of these "investments," further investigations by Relator and by various State agencies revealed that more than \$13 million dollars in State funds had been misappropriated by Thomas Noe. These same investigations disclosed in addition substantial levels of mismanagement and of influence-peddling involving not only Noe and the Noe-controlled entities but also various public officials and employees. In 2008, Noe was convicted of engaging in a pattern of corrupt activity, aggravated theft, money laundering, forgery, and tampering with records, and he was sentenced to a total of 18 years incarceration. *See State v. Noe*, 6th Dist., Lucas nos. L-06-1393 & L-09-1193, 2009-Ohio-6978, *appeal not accepted*, 125 Ohio St. 3d 1447, 2010-Ohio-2510, 927 N.E.2d 1127.

(11) Among the agencies of the State that conducted investigations related to Thomas Noe and the investment activities of the Bureau of Workers' Compensation was the Respondent Office of the Inspector General. As described by the Respondent Office in its 2006 Annual Report, "the investigation into the investment practices of the Bureau of Workers' Compensation [is] a monumental task" and a "historically unprecedented endeavor" that would "continue until we have thoroughly uncovered all acts of wrongdoing, and ensured that individuals responsible

for that wrongdoing have been appropriately identified and made to answer for their actions.” State of Ohio Office of the Inspector General, *2006 Annual Report*, p. 11 (hereinafter “*2006 Annual Report*, p. ___”). In addition, the Report said, “we will work towards presenting final reports of the multi-faceted investigation that will include recommendations that will help avoid such circumstances in the future.” *Id.*

(12) During the course of the investigation by Respondent Office of the Inspector General, the 126th General Assembly enacted section 502.03.01 of Amended Substitute House Bill 66, which provided in pertinent part that “as part of the Inspector General’s investigation of the investments of the assets of the [Workers’ Compensation] funds *** the Inspector General shall have a fiduciary review of those investments conducted by an independent firm **** [and] shall submit a copy of the fiduciary review that the Inspector General receives to the Governor, the Attorney General, the Auditor of State, and the General Assembly.” Am. Sub. H.B. 66, 151 Ohio Laws 2868, at 5117 (eff. June 30, 2005). According to the above-noted Annual Report, the fiduciary review was completed with a report “comprising fifty-six pages of text and numerous exhibits.” *2006 Annual Report*, p. 15.

(13) During the years that followed, the Respondent Office of the Inspector General continued and broadened its investigation, working as the lead agency of a task force that included several county prosecuting attorneys, other agencies of the State, the Federal Bureau of Investigation, and the offices of both of Ohio’s United States Attorneys. In 2007, the General Assembly created the Respondent Office of the Deputy Inspector General for the Bureau of Workers’ Compensation and Industrial Commission. R.C. 121.51.

(14) In its 2007 Annual Report, Respondent Office of the Inspector General advised as to the task-force investigation that “the investigation is not yet complete” and that “[w]e must continue our mission of thoroughly investigating all aspects of the case.” State of Ohio Office of Inspector General, *2007 Annual Report*, p. 21. In its 2008 Annual Report, however, the sole arguable reference to the Noe-related investigation was a statement that “For the past eighteen months, [the staff of the Office of the Deputy Inspector General for the Bureau of Workers’ Compensation and Industrial Commission] have been actively involved in efforts to restore public trust in the IC and in BWC, to foster accountability by the officers and employees of those agencies, to conduct impartial investigations and to provide recommendations that will both improve operations and processes at BWC and the IC and restore confidence in the agencies’ day to day operations.” State of Ohio Office of Inspector General, *2008 Annual Report*, p. 21. None of Respondents’ subsequent Annual Reports, from 2009 through 2012, has included any reference to the Noe-related investigation or task force.

(15) In February 2012, a Deputy Inspector General in the Respondent Office of the Inspector General publicly stated that any criminal proceedings arising from the Noe-related investigation had come to an end. Notwithstanding the statutory duty of the Respondents to prepare a “detailed report” of each investigation conducted by the Respondents, R.C. 121.42(E), the Deputy Inspector General stated that Respondents did not plan on issuing a report. The stated ground for this decision was that “[t]here’s nobody here who was really involved in the case.” Shortly thereafter, however, on February 23, 2012, Respondent Meyer’s office issued a statement that a final report would be prepared. According to the statement, “[n]o timeline has been

constructed for release and any additional information or comment regarding the report will not be available until after the report of investigation has been concluded.”

(16) One year later, in February 2013, Respondent Meyer’s office responded to inquiries about the preparation and release of the final investigation report by stating that the office would have no comment regarding the report until after it was released to the public.

(17) Almost one year after that announcement (and two years after the announcement that a final investigative report would be prepared), in January 2014, Respondent Meyer’s office again responded to inquiries regarding the final investigative report by saying that “[o]ur policy is not talk about investigations until after a report of investigation is issued” and that “[n]o timeline has been set for issuance of the report of investigation.”

(18) There can be no doubt that Respondents’ investigation of the Noe-related investments and ancillary matters is now complete and that it has been complete for the past several years. Nor can there be any doubt that Respondents have failed to “[p]repare a detailed report” of the investigation as required by R.C. 121.42(E).

(19) On January 23, 2014, Relator delivered to Respondents a written request that Respondents make available for inspection both the statutorily required “detailed report” of the Noe-related investigation and the report of the “fiduciary review” required by the provisions Amended House Bill 66 of the 126th General Assembly. The request further asked that Respondents advise Relator if either these reports did not exist.

(20) On January 24, 2014, Respondents acknowledged receipt of Relator’s request and said “[w]e will evaluate your requests and respond to you in the very near future.” Relator has received no further communications from Respondents regarding the requested records.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Final Investigative Report

(2.1) Respondents have a clear legal duty to prepare a final investigative report regarding the Noe-related investigation of the Bureau of Workers' Compensation. R.C. 121.42 ("The inspector general shall do all of the following: **** (E) Prepare a detailed report of each investigation ****."). Once completed, such a report is a public record that must be available for inspection and copying under the Public Records Act (R.C. 149.43). R.C. 121.44.

(22) If Respondents have not prepared the detailed report as required by law, they are under a clear legal duty to do so and Relator has a clear legal right to have them do so. *See State ex rel. Fairfield Leader v. Ricketts* (1990), 56 Ohio St. 3d 97, 99-101, 564 N.E. 2d 486. Moreover, Relator has no adequate remedy in the ordinary course of law to compel Respondents' performance of their duty, and mandamus is thus the appropriate remedy for that purpose. *Id.*, 56 Ohio St. 3d at 102-103; *State ex rel. American Civil Liberties Union of Ohio, Inc. v. Cuyahoga County Board of Commissioners*, 128 Ohio St. 3d 256, 2011-Ohio-625, 943 N.E.2d 553, at ¶ 25.

(23) If, on the other hand, Respondents have prepared the detailed investigation report as required by law, the report is a public record and Respondents must make it available for inspection by Relator. Respondents' failure to do so notwithstanding Relator's request is a violation of Respondents' obligation under the Public Records Act to make public records

available for inspection and copying on request. The writ of mandamus is the appropriate remedy to compel compliance with the Act.

SECOND CLAIM FOR RELIEF

Report of the required “fiduciary review”

(24) Among the statutory obligations of each of the Respondents, as recited above, is the duty specifically arising from the investigation of the investments of the Bureau of Workers’ Compensation to “have a fiduciary review of those investments conducted by an independent firm” and to “submit a copy of the fiduciary review that the Inspector General receives to the Governor, the Attorney General, the Auditor of State, and the General Assembly.” Am. Sub. H.B. 66, § 502.03.01, 151 Ohio Laws 2868, at 5117.

(25) If, as stated in Respondents’ 2006 Annual Report, this “fiduciary review” was completed and a report prepared regarding its findings, the report of the findings is a public record subject to public inspection and copying under the Public Records Act, R.C. 149.43. Respondents’ failure to make the report of the “fiduciary review” available to Relator for inspection notwithstanding Relator’s request is a violation of Respondents’ obligation under the Public Records Act to make public records available for inspection and copying on request. The writ of mandamus is the appropriate remedy to compel compliance with the Act.

(26) If, on the other hand, no report of the “fiduciary review” has been prepared, Respondents are under a clear legal duty to see to its preparation, and Relator has a clear legal right to have Respondents do so. Moreover, Relator has no adequate remedy in the ordinary

course of law to compel Respondents' performance of their duty, and mandamus is thus the appropriate remedy for that purpose.

Based on the claims for relief stated in this Complaint, Relator prays:

(a) **as to each of the records** at issue (that is, the detailed final investigation report and the fiduciary review of the investments by the Bureau of Workers' Compensation), (i) *if Respondents have not prepared the record as required by law*, that this Court issue a writ of mandamus directing the Respondents and each of them to promptly carry out their statutory duties to prepare the record, and, (ii) *if Respondents have already carried out their statutory duties to prepare the record*, that this Court then issue a writ of mandamus directing the Respondents and each of them to make the record available for inspection and copying by Relator promptly and without further delay.

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

(c) that the Court grant such other relief as is appropriate in the premises.

/s/ Fritz Byers

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