



courts,<sup>1</sup> to produce records Perry sought through a public records request. He also seeks an award of statutory damages and costs in this action. For the reasons that follow, we grant respondent's motion to dismiss and dismiss Perry's complaint.

### **Procedural and Factual Background**

{¶ 2} On August 28, 2020, Perry filed a complaint for writ of mandamus. There, he alleged that he sent a public records request to respondent via certified mail. He included the tracking information for the mailing, which he says indicates that the mailing was received on March 26, 2020. The request asked for three items: Respondent's records retention schedule, public records policy, and a list of employees in respondent's office. Perry claims that he did not receive any response to his public records request by the date that he filed his complaint.

{¶ 3} On September 30, 2020, respondent filed a motion to dismiss. Respondent claimed that a recent Supreme Court of Ohio case is determinative of the issues raised in Perry's complaint. As a result of this case, respondent argued that Perry's complaint could not succeed, and the case should be dismissed. Respondent also filed a notice with attached affidavit that records responsive to Perry's request were provided on October 2, 2020.

{¶ 4} Perry did not timely file a response to the motion to dismiss.

---

<sup>1</sup> The clerk of courts is only identified by title in the complaint, which is permissible under App.R. 29(C)(2) and Civ.R. 25(D)(2).

## Law and Analysis

{¶ 5} A writ of mandamus is an appropriate means to secure the release of public records, whether through Ohio’s Public Records Act or the Ohio Rules of Superintendence. *State ex rel. Cincinnati Enquirer v. Lyons*, 140 Ohio St.3d 7, 2014-Ohio-2354, 14 N.E.3d 989, ¶ 11. However, “a court must first address the threshold issue whether the petitioner has sought the requested documents through the correct vehicle, either R.C. 149.43 or Sup.R. 44 through 47.” *State ex rel. Parisi v. Dayton Bar Assn. Certified Grievance Commt.*, 159 Ohio St.3d 211, 2019-Ohio-5157, 150 N.E.3d 43, ¶ 14. This is because “[t]he vehicle used dictates not only the documents that are available to the relator and the manner in which they are available but also the remedies available to the relator should the relator be successful.” *Id.*

{¶ 6} In the present case, Perry is seeking records related to the administration of the office of a clerk of courts.

Generally, if the records requested are held by or were created for the judicial branch, then the party seeking to obtain the records must submit a request pursuant to Sup.R. 44 through 47. *See* Sup.R. 44(B) (defining “court record” as including case documents and administrative documents); Sup.R. 44(C)(1) (defining “case document” generally as a document “submitted to a court or filed with a clerk of court in a judicial action or proceeding”); Sup.R. 44(G)(1) (defining “administrative document” generally as a document “created, received, or maintained by the court to record the administrative, fiscal, personnel, or management functions, policies, decisions, procedures, operations, organization, or other activities of the court”) \* \* \*.

*Id.* at ¶ 21.

{¶ 7} Perry’s request for the public records policy, records retention schedule, and a list of court employees for the clerk of courts for the Cleveland Heights Municipal Court falls squarely within the definition of administrative records in Sup.R. 44(G)(1).

{¶ 8} Perry’s request for records was not premised on a specific statute or rule, nor was he required to do so. *State ex rel. Parker Bey v. Byrd*, Slip Opinion No. 2020-Ohio-2766, ¶ 14 (“Neither the statute nor the rules require a requester to identify the legal authority providing a basis for the request when requesting a record, and records that are open to the public should be reasonably provided.”). However, it is necessary to cite the source of authority when “the requester attempts to satisfy the more demanding standard applicable when claiming that he is entitled to a writ of mandamus to compel compliance with the request.” *Id.*

{¶ 9} Perry’s complaint relies exclusively on R.C. 149.43 for his claims for relief. As respondent points out, this statute does not apply to administrative records of a court and its clerk. *Parker Bey* at ¶ 15. The Supreme Court of Ohio determined that administrative records of a court, including the records Perry has requested in this case, are governed by the Rules of Superintendence, not Ohio’s Public Records Act. *Id.*, citing Sup.R. 44(G)(1); Sup.R. 47(A)(2). It is clear from the nature of the documents requested that they fall under the provisions of the Rules of Superintendence for access to court records. Therefore, Perry’s claims alleged in his complaint entirely premised on the Public Records Act must fail. *Parisi*, 159 Ohio St.3d 211, 2019-Ohio-5157, 150 N.E.3d 43, at ¶ 28.

{¶ 10} That is not to say that respondent has no duty to provide the requested records. The Ohio Rules of Superintendence provide a similar right to access to records as that imposed by R.C. 149.43, and respondent still has a duty to timely provide records that are presumed open and public. *Parker Bey* at ¶ 17.

{¶ 11} Respondent has filed a notice of compliance with attached affidavit averring that the records Perry requested have been provided. Generally, producing requested records renders a public records action moot. *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, 148 Ohio St.3d 433, 2016-Ohio-7987, 71 N.E.3d 258, ¶ 29; *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961, ¶ 43. Therefore, we must determine whether the instant claim for relief is moot.

{¶ 12} Usually, no extrinsic material may be considered when deciding a motion to dismiss pursuant to Civ.R. 12(B)(6). *State ex rel. Ames v. Summit Cty. Court of Common Pleas*, 159 Ohio St.3d 47, 2020-Ohio-354, 146 N.E.3d 573, ¶ 5. Such motions test the adequacy of the complaint, and are limited to matters contained therein. However, extrinsic evidence may be used to demonstrate that an action has become moot. *Id.*, quoting *State ex rel. Nelson v. Russo*, 89 Ohio St.3d 227, 228, 729 N.E.2d 1181 (2000), quoting *Pewitt v. Lorain Corr. Inst.*, 64 Ohio St.3d 470, 472, 597 N.E.2d 92 (1992). Therefore, we may consider respondent's notice of compliance in deciding whether the action is moot.

{¶ 13} The notice of compliance and attached affidavit demonstrates that a list of employees of the Cleveland Heights Municipal Court and clerk of courts was

sent to Perry. The notice also directs Perry to the Cleveland Heights Municipal Court's local rules and the Rules of Superintendence for its public records policy and records retention schedule.

**{¶ 14}** Rule 8 of the Local Rules of the Cleveland Heights Municipal Court provides:

A. Court files are presumed open to public access. The current docket for all cases and, where available, the electronic files, can be obtained through the Court's website at [www.clevelandheightscourt.com](http://www.clevelandheightscourt.com).

B. All Cleveland Heights Municipal Court case records filed after January 1, 2011, will be retained in electronic media format, including text and digital images, as an alternative to a paper record. Paper media may be destroyed after it is imaged and saved to the electronic case record.

C. Restricting public access to case documents and obtaining access to those documents shall be done in accordance with the Rules of Superintendence for the Courts of Ohio.

D. Paper files may be examined under the supervision of the Clerk or Deputy Clerk. Upon request, copies of documents will be provided at a cost as may be determined by the Clerk and as permitted by law.

E. No paper files may be removed from the Clerk's office without the written consent of the Judge or Clerk. Any person seeking to remove a file shall set forth in writing the case name and number, the reason for removal, and the destination where the file is being taken.

F. Section 1901.41 of the Ohio Revised Code and the record retention schedules in Rule 26 and 26.05 of the Rules of Superintendence shall be followed. Case files that have been finally disposed of for at least five years may be destroyed by order of the Court pursuant to Section 1901.41.

**{¶ 15}** Respondent has demonstrated that Perry has been provided with responses to his public records requests. Therefore, his claim for the production of records is moot.

{¶ 16} Perry also seeks an award of statutory damages and costs in this action pursuant to R.C. 149.43(C)(2).<sup>2</sup> However, the Ohio Rules of Superintendence, not R.C. 149.43, govern access to administrative records maintained by clerks of courts. *Parker Bey*, Slip Opinion No. 2020-Ohio-2766, ¶ 15. Further, “the Rules of Superintendence do not authorize statutory damages under any circumstances.” *State ex rel. Harris v. Pureval*, 155 Ohio St.3d 343, 2018-Ohio-4718, 121 N.E.3d 337, ¶ 11, citing *Cleveland Constr., Inc. v. Villanueva*, 186 Ohio App.3d 258, 2010-Ohio-444, 927 N.E.2d 611, ¶ 18 (8th Dist.), fn. 8. Accordingly, Perry is not entitled to statutory damages or costs. Respondent’s motion to dismiss this claim is granted.

{¶ 17} Perry’s claim for the production of records is moot in light of respondent’s evidence that records responsive to Perry’s requests have been provided, and Perry is not entitled to statutory damages or costs. Respondent’s motion to dismiss is granted. Costs to respondent; costs waived. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

---

<sup>2</sup> Perry’s past efforts to extract \$1000 from various government agencies have proven unsuccessful. See *State ex rel. Perry v. Byrd*, 8th Dist. Cuyahoga No. 109006, 2020-Ohio-34; *State ex rel. Perry v. O’Malley*, 8th Dist. Cuyahoga No. 109088, 2020-Ohio-1291.

{¶ 18} Complaint dismissed.

---

RAYMOND C. HEADEN, JUDGE

KATHLEEN ANN KEOUGH, P.J., and  
MARY EILEEN KILBANE, J., CONCUR