

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO EX REL.,
ANTWANE D. MITCHELL,

:

Relator,

:

No. 111205

v.

:

NAILAH K. BYRD, CUYAHOGA
CLERK OF COURT,

:

Respondent.

:

JOURNAL ENTRY AND OPINION

JUDGMENT: COMPLAINT DISMISSED

DATED: August 1, 2022

Writ of Mandamus
Motion No. 553676
Order No. 556823

Appearances:

Antwane D. Mitchell, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Kelli Kay Perk, Assistant Prosecuting
Attorney, *for respondent*.

ANITA LASTER MAYS, P.J.:

{¶ 1} On January 14, 2022, the relator, Antwane D. Mitchell (“Mitchell”),
commenced this public records mandamus action against the respondent, Cuyahoga

County Clerk of Courts Nailah K. Byrd (“respondent”). On December 6, 2021, Mitchell had requested “a copy of all the petit empaneled juries and the cases they’re attached to (i.e. defendant’s name, race, age and charge) dating back the last 25 years for judges S. Strickland-Saffold, K. S[utula], and N. Russo.” He alleged that despite repeated requests for the status of his request, he did not receive any records.

{¶ 2} On January 18, 2022, this court transferred the case to mediation. However, by late March, mediation had not resolved the case, and this court resumed control of the case.

{¶ 3} On March 29, 2022, the respondent moved to dismiss. First, the respondent stated that the requests for a copy of all petit empaneled juries was unclear and assumed that Mitchell wanted the names of the jurors in every case decided by a jury in the courts of the three named judges for the last 25 years. The respondent further noted that R.C. 149.43 applies to all cases commenced before July 1, 2009, whereas Sup.R. 44-47 apply to cases after that date. The respondent then submitted that juror names and addresses are not public records under R.C. 149.43 and *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, 781 N.E.2d 180. Moreover, under the public records act, there is no duty to create new records to satisfy a request. The respondent argued that listing the jurors’ names in a case would require creating a new record.

{¶ 4} Similarly, under the Rules of Superintendence there is no duty to compile information into new records. Sup.R. 46 governs bulk distribution of court records. The respondent submits that because Mitchell is seeking 25 years of

records, his request requires a bulk distribution. Furthermore, the records that Mitchell seeks do not exist in the format he seeks; thus, the respondent would have to create a new record. Sup.R. 46(A)(2)(a) provides that the clerk of court may create a new compilation customized for the convenience of a person who requests a bulk distribution. Sup.R. 46(A)(2)(b) provides that in determining whether to create such a new compilation, the respondent may consider whether creating such a compilation is an appropriate use of the available resources. Because the rule makes the action permissive, it does not create a duty enforceable in mandamus.

{¶ 5} Finally, the respondent argues that the request is unduly burdensome. Relying on *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, which held that a six-year search for records was too burdensome, the respondent argues that a 25-year search is also too burdensome.

{¶ 6} Mitchell filed his brief in opposition on April 8, 2022. He accuses the respondent of bad faith because she did not disclose until after he had filed this action that the records were not kept as Mitchell requested. Moreover, he clarified that he is not seeking the jurors' names, addresses, or questionnaire responses. Rather, he seeks records showing the jurors' age, sex, race/ethnicity, and city of residence. To fit this request within the respondent's parameters, Mitchell is now asking for all the empaneled criminal petit juries for at least the last 15 years. He did not explicitly disclaim his request for the cases for those juries, i.e., the defendants'

name, race, age, and charge, or the limitation for the three specified judges. He concluded by invoking the principles of open records.

{¶ 7} In response, the respondent noted that her records do not record race information, and that this request is still overbroad, too burdensome, and would require a new compilation of records, which she is not required to do.

{¶ 8} Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio's Public Records Act, and the Rules of Superintendence. Sup.R. 47(B) and *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 133 Ohio St.3d 139, 2012-Ohio-4246, 976 N.E.2d 877.¹ Because the law specifies mandamus as the remedy, the relator does not have to show the lack of an adequate remedy at law to prevail. *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208. As with all writ actions, the relator must establish the right to a writ by clear and convincing evidence. *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967); and *State ex rel. Pietrangelo v. Avon Lake*, 149 Ohio St.3d 273, 2016-Ohio-5725, 74 N.E.3d 419. The requester must request the records before bringing the mandamus action, and the "request must be specific and particularly describe what it is that is being sought." *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 756, 577 N.E.2d 444 (10th Dist.1989).

¹ The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. *State ex rel. Harris v. Rhodes*, 54 Ohio St.2d 41, 374 N.E.2d 641 (1978).

{¶ 9} In Ohio, public records are the people's records. To that end, the public records law is to be construed liberally in favor of broad access and disclosure. The courts are to resolve any doubt in favor of disclosure. *State ex rel. Vindicator Printing Co. v. Youngstown*, 104 Ohio St.3d 1436, 2004-Ohio-7079, 819 N.E.2d 1120. Exemptions to disclosure must be strictly construed against the public records custodian, and the government bears the burden of establishing the applicability of an exception. *Morgan* at ¶ 47.

{¶ 10} However, the government has no duty to give information or to create new records by searching for and compiling information from existing records. *State ex rel. Lanham v. Ohio Adult Parole Auth.*, 80 Ohio St.3d 425, 687 N.E.2d 283 (1997); and *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 707 N.E.2d 496 (1999). A public records request may be improper if it requires a record custodian to do research for a requester and to identify a specific subset of records containing selected information. In *State ex rel. Shaughnessy v. Cleveland*, 149 Ohio St.3d 612, 2016-Ohio-8447, 76 N.E.3d 1171, the requester asked for police reports within a two-week period from two police districts for all nondomestic-violence-related aggravated assaults or assaults where the victims sought medical care at a hospital, and the Ohio Supreme Court ruled that the request was improper because it required the custodian to do research to identify the specific subsets containing selected information. In *State ex rel. Fant v. Tober*, 8th Dist. Cuyahoga No. 63737, 1993 Ohio App. LEXIS 2591 (Apr. 28, 1993), this court stated R.C. 149.43 does not compel a governmental unit to do research or identify records containing selected

information. In that case, Fant sought the names, employee numbers, payroll numbers and residential addresses of certain employees named in three “RTA Customer Communication Reports.” The Supreme Court alternatively stated that to constitute an improper request, it must require the government agency to search through voluminous documents for those that contain certain information or to create a new record by searching for and compiling information from existing records. *State ex rel. Carr v. London*, 144 Ohio St.3d 211, 2015-Ohio-2363, 41 N.E.3d 1203, ¶ 22.

{¶ 11} Additionally, requests may be too broad in scope. In *Zauderer*, 62 Ohio App.3d at 756, 577 N.E.2d 444, the court ruled that the public record law does not create a right to a complete duplication of voluminous government files when confronted with a request for any and all traffic accident reports kept by the Franklin County Sheriff and the Ohio State Highway Patrol. The Supreme Court affirmed that principle in *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St.3d 619, 640 N.E.2d 174 (1994), and *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686. A request for all records of the prison quartermaster’s order for and receipt of clothing and shoes for a period of over seven years amounted to a “complete duplication” and resulted in the denial of the writ. *State ex rel. Dehler v. Spatny*, 127 Ohio St.3d 312, 2010-Ohio-5711, 939 N.E.2d 831. In *Zidonis*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, the Supreme Court upheld the denial of a request for all of the college’s complaint and litigation files, because the request was overbroad. In *State ex rel. Dillery v. Icsman*, 92 Ohio

St.3d 312, 314, 750 N.E.2d 156 (2001), the Supreme Court of Ohio ruled that a request for “any and all records generated * * * containing any reference whatsoever to Kelly Dillery” was improperly overbroad and would not support an award of attorney fees.

{¶ 12} Similarly, there is no duty to produce records that never existed or no longer exist. *Pietrangelo*, 149 Ohio St.3d 273, 2016-Ohio-5725, 74 N.E.2d 419.

{¶ 13} Mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977); *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 113 N.E.2d 14 (1953).

{¶ 14} In the present case, the court has no doubt that the request is too burdensome, requiring the respondent to provide information and to create new records by searching for and compiling information from existing records. To fulfill the request, the respondent would have to pull the records for all the empaneled juries for 15 to 25 years, determine which ones were criminal juries, and then search and compile the age, sex, race/ethnicity, and city of residence for those jurors, if all of that information even exists. To fulfill the original request, the respondent would then have to further determine which of those cases were tried by the three specified judges, and then compile the verdicts, along with the defendants’ name, race, age, and charge. Furthermore, for more recent records, Sup.R. 46(A)(2)(b) gives the respondent discretion as to whether or not to fulfill such requests, something not generally enforceable through mandamus.

{¶ 15} Accordingly, this court grants the respondent's motion to dismiss and dismisses this application for a writ of mandamus. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of the judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶ 16} Complaint dismissed.

ANITA LASTER MAYS, PRESIDING JUDGE

LISA B. FORBES, J., and
EILEEN T. GALLAGHER, J., CONCUR