

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Griffin v. Szoke*, Slip Opinion No. 2023-Ohio-3096.]

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SLIP OPINION NO. 2023-OHIO-3096

THE STATE EX REL. GRIFFIN *v.* SZOKE.

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Mandamus—Public-records requests—Requested records have been provided—Inmate failed to clearly and convincingly show that warden’s assistant failed to fulfill his duties under Public Records Act—Request for writ denied as moot and request for statutory damages denied on merits.

(No. 2022-1523—Submitted May 16, 2023—Decided September 6, 2023.)

IN MANDAMUS.

Per Curiam.

{¶ 1} Relator, Mark Griffin, submitted a public-records request to respondent, Allan Szoke, a warden’s assistant employed by the Ohio Department of Rehabilitation and Correction. When Szoke failed to provide the records, Griffin brought this action, requesting a writ of mandamus ordering Szoke to produce them.

Because Szoke has since provided Griffin with the requested records, we deny as moot Griffin’s request for a writ of mandamus. We also deny Griffin’s request for statutory damages.

I. FACTUAL AND PROCEDURAL BACKGROUND

{¶ 2} Griffin is an inmate at the Toledo Correctional Institution (“TCI”). Szoke works at the Ross Correctional Institution (“RCI”), where his duties include responding to public-records requests from inmates.

{¶ 3} On November 13, 2022, Griffin sent an electronic kite to RCI. A kite is a type of written correspondence between an inmate and prison staff. *See State ex rel. McDougald v. Greene*, 161 Ohio St.3d 130, 2020-Ohio-3686, 161 N.E.3d 575, ¶ 16. In his kite, Griffin made a public-records request for “a copy of the warden[’]s pay roll, and time sheet, for the month of October 2022.” Although Griffin did not specify that he was seeking the records for the warden of RCI, as opposed to the warden of TCI, both Griffin and Szoke in their briefs and evidence treat the request as being for records for RCI’s warden. On November 18, Szoke responded by kite, stating, “You will need to contact the [public-information officer] of your institution.”

{¶ 4} On November 19, Griffin sent a kite to TCI, stating, “[T]hey told me to go through my institution... Why. Can you give me a response..... .” Derek Burkhardt, a public-information officer at TCI, responded on November 22 by kite. He stated: “I reviewed and I would not have access to get that information requested. That would come from them however, they could forward to me to deliver to you.” The record contains no further communication regarding the request.

{¶ 5} On December 12, Griffin filed this action in this court, seeking a writ of mandamus compelling production of the records and an award of statutory damages. We granted an alternative writ and ordered the submission of evidence and briefs. 169 Ohio St.3d 1440, 2023-Ohio-482, 203 N.E.3d 727. As evidence,

Szoke submitted an affidavit in which he avers that on January 19, 2023, he mailed the requested records to Griffin. Szoke also included the produced records as evidence. In his reply brief, Griffin states that he did not actually receive the records until March 21 but agrees that he has now received them.

II. LEGAL ANALYSIS

A. *The request for a writ is moot*

{¶ 6} Because the parties agree that the requested records have now been produced, we deny the request for a writ of mandamus as moot. *See State ex rel. Martin v. Greene*, 156 Ohio St.3d 482, 2019-Ohio-1827, 129 N.E.3d 419, ¶ 7 (“In general, a public-records mandamus case becomes moot when the public office provides the requested records”).

B. *Statutory damages*

{¶ 7} The production of the records does not moot Griffin’s request for statutory damages. *See id.* at ¶ 8; *see also State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 13, 2018-Ohio-5108, 123 N.E.3d 887, ¶ 20-22. Griffin is entitled to statutory damages if (1) he transmitted his request by hand delivery, electronic submission, or certified mail, (2) his request was transmitted to the public office or person responsible for the public records, (3) the request fairly described the public records being sought, and (4) the public office or person responsible for public records failed to fulfill their duties under R.C. 149.43(B), such as by not promptly producing the records. R.C. 149.43(C)(2). Griffin must prove these elements by clear and convincing evidence. *State ex rel. Mobley v. Toledo*, 170 Ohio St.3d 427, 2022-Ohio-3889, 214 N.E.3d 519, ¶ 11.

{¶ 8} Here, Griffin transmitted his request by electronic kite, which constitutes electronic submission for purposes of R.C. 149.43(C)(2), *State ex rel. Griffin v. Sehlmeier*, 165 Ohio St.3d 315, 2021-Ohio-1419, 179 N.E.3d 60, ¶ 21, and the records he requested—payroll and timesheets of a state employee—are public records, *Kish v. Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, 846 N.E.2d

811, ¶ 25; *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 142-143, 647 N.E.2d 1374 (1995).

{¶ 9} Griffin has not shown, however, that Szoke failed to fulfill his duties under the Public Records Act, R.C. 149.43. Griffin argues that Szoke improperly denied his request and unreasonably delayed producing the records, but the record does not clearly and convincingly show this. Szoke responded to Griffin’s initial kite by telling him that he would need to contact the public-information officer at Griffin’s own institution. Griffin then contacted Burkhart, TCI’s public-information officer, but did not actually ask him for the records; instead, Griffin asked why he needed to go through Burkhart. Burkhart responded that he did not have access to the records but that RCI “could forward [them] to [him] to deliver to [Griffin].” Griffin did not follow up with either Szoke or Burkhart to request that the records be delivered to Burkhart or to ask for further clarification regarding their responses. Instead, Griffin filed this mandamus action.

{¶ 10} Based on the evidence in the record, Griffin has not clearly and convincingly shown that Szoke denied Griffin’s public-records request or otherwise failed to fulfill his duties under the Public Records Act. We thus deny Griffin’s request for statutory damages.

C. Griffin’s motion to place this court on notice is moot

{¶ 11} Finally, in January 2023, Griffin filed a “motion to place the court on notice of the actual public records requested documents, ‘employee records,’ ” in which he reidentifies the documents he was requesting. We deny the motion as moot.

III. CONCLUSION

{¶ 12} Because Szoke has now produced the records at issue, Griffin’s request for a writ of mandamus is moot. In addition, because Griffin has not shown by clear and convincing evidence that Szoke failed to fulfill his duties under the Public Records Act, Griffin is not entitled to statutory damages. We therefore deny

the request for a writ as moot and deny the request for statutory damages. We also deny Griffin’s motion to place this court on notice as moot.

Writ denied.

FISCHER, DEWINE, DONNELLY, BRUNNER, and DETERS, JJ., concur.

KENNEDY, C.J., concurs in part and dissents in part, with an opinion joined by STEWART, J.

KENNEDY, C.J., concurring in part and dissenting in part.

{¶ 13} I concur in the majority’s decision to deny relator Mark Griffin Sr.’s request for a writ of mandamus as moot because the requested public records have been produced. I also concur in the majority’s decision to deny as moot Griffin’s “motion to place the court on notice of the actual public records requested documents, ‘employee records.’ ” But I dissent from the majority’s decision to deny Griffin statutory damages and would award him the statutorily prescribed maximum of \$1,000. Therefore, I concur in part and dissent in part and would award statutory damages pursuant to R.C. 149.43(C)(2).

{¶ 14} A person who has requested public records is entitled to recover statutory damages if the person responsible for the public records fails to comply with an obligation set forth in R.C. 149.43(B). R.C. 149.43(C)(2). For each business day during which the person responsible for the requested public records fails to comply with an obligation under R.C. 149.43(B), the requester shall be entitled to damages in the amount of \$100, “beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars.” R.C. 149.43(C)(2).

{¶ 15} The majority denies Griffin’s request for statutory damages because it does not believe that he showed, by clear and convincing evidence, that the records custodian “failed to fulfill his duties under the Public Records Act, R.C. 149.43.” Majority opinion, ¶ 9. I disagree.

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{¶ 16} On November 13, 2022, Griffin electronically submitted his public-records request. Respondent, Allan Szoke, the person responsible for responding to inmates’ public-records requests at the Ross Correctional Institution, received the request. Griffin’s request fairly described the public records he was seeking; it stated that pursuant to the Public Records Act, he was forwarding his request to the Ross Correctional Institution” and that he was seeking “a copy of the wardens [sic] pay roll, and time sheet, for the month of October 2022.”

{¶ 17} None of the evidence presented indicates that Szoke was uncertain about what Griffin was requesting. It is true that Griffin did not include the warden’s name in his request, but Szoke’s brief refers to the records requested as records of the warden of the Ross Correctional Institution. If Szoke had found Griffin’s request to be ambiguous or overbroad, Szoke could have asked for clarification or denied the request and provided Griffin an opportunity to revise it pursuant to R.C. 149.43(B)(2). Szoke did neither; instead, he told Griffin to contact the public-information officer at the Toledo Correctional Institution.

{¶ 18} As additional grounds for its decision to deny Griffin statutory damages, the majority cites the fact that he “did not follow up with either Szoke or [Derek Burkhart, a public-information officer at the Toledo Correctional Institution] to request that the records be delivered to Burkhart or to ask for further clarification regarding their responses” before filing his mandamus action. Majority opinion at ¶ 9. But the statute does not require any further action by the public-records requester. The General Assembly has required only that the person seeking a public record make a request; the burden is then on the public-records custodian to respond appropriately. After Szoke failed to respond appropriately, Griffin took the next action afforded him under the statutory scheme.

{¶ 19} Under R.C. 149.43(C)(1), a person allegedly aggrieved by the failure of the person responsible for public records to promptly produce requested records may either file a complaint with the clerk of the Court of Claims or the clerk of the

court of common pleas or commence a mandamus action. Nowhere in the statutory scheme is the aggrieved requester required to follow up with the person responsible for the public records when that person has failed to perform an obligation set forth in R.C. 149.43(B).

{¶ 20} Griffin filed this mandamus action on December 12, 2022, and Szoke was served with the complaint on December 16, 2022, but Szoke did not mail the requested records to Griffin until January 19, 2023. Therefore, I would find by clear and convincing evidence that Szoke failed to fulfill his duties under R.C. 149.43(B) because without just cause, he failed to produce the requested records within a reasonable time. As compensation for the delay, Griffin is entitled to statutory damages in the amount of \$100 for each business day from December 12, 2022, through January 19, 2023, up to a maximum of \$1,000.

{¶ 21} For these reasons, I would grant Griffin’s request for statutory damages in the sum of \$1,000. Because the majority does not, I dissent from that portion of its judgment. Therefore, I concur in part and dissent in part.

STEWART, J., concurs in the foregoing opinion.

Mark Griffin, pro se.

Dave Yost, Attorney General, and John H. Bates, Assistant Attorney General, for respondent.
