

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Greg A. Bell,	:	
Relator,	:	Nos. 09AP-861
v.	:	09AP-944
	:	and 09AP-1055
David W. Brooks,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on September 9, 2010

Philip Wayne Cramer, for relator.

Isaac, Brant, Ledman & Teetor LLP, Mark Landes and Mark H. Troutman, for respondent.

IN MANDAMUS
ON OBJECTIONS TO MAGISTRATE'S DECISION

TYACK, P.J.

{¶1} Greg A. Bell has filed three separate actions in mandamus, seeking writs to compel the providing of records under the provisions of R.C. 149.43, commonly known as the Public Records Act.

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings. The magistrate requested that the parties file evidentiary material and briefs on the issue of whether the documents being sought are in fact public

records. The magistrate then issued a magistrate's decision on the issue, which is appended to this decision. The magistrate found that the documents are not public records.

{¶3} Counsel for Bell has filed objections to the magistrate's decision. Counsel for Brooks has filed a memorandum in response. The case is now before the court for a full, independent review.

{¶4} The documents being sought by Bell are records held by the County Risk Sharing Authority ("CORSA"), which is managed by Brooks. When the documents were requested, Brooks responded with a letter stating that CORSA is a private corporation, not a public office. As a courtesy, Brooks provided some documents which involved Madison County as an entity, but refused to provide other documents such as minutes of the meetings of the CORSA board of trustees and records as to the compensation of CORSA employees.

{¶5} At issue in this case is the application of *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854. The syllabus for that case reads:

1. Private entities are not subject to the Public Records Act absent a showing by clear and convincing evidence that the private entity is the functional equivalent of a public office.
2. In determining whether a private entity is a public institution under R.C. 149.011(A) and thus a public office for purposes of the Public Records Act, R.C. 149.43, a court shall apply the functional-equivalency test. Under this test, the court must analyze all pertinent factors, including (1) whether the entity performs a governmental function, (2) the level of government funding, (3) the extent of government involvement or regulation, and (4) whether the entity was created by the government or to avoid the requirements of the Public Records Act.

{¶6} CORSA is a joint self-insurance pool. CORSA operates like an insurance company for public clients, especially counties and county governments. Although the Ohio legislature authorized the creation of entities such as CORSA by enacting R.C. 2744.081, no governmental entity literally created CORSA. However, CORSA is considered to be tax exempt by the Internal Revenue Service ("IRS") because CORSA informs the IRS that it serves as an instrumentality of government through its administration of risk-sharing pools for governmental entities.

{¶7} Looking at the *Oriana House* case and applying it, we are compelled to find that the documents CORSA has withheld are not public records. *Oriana House* controlled the day-to-day operation of the Summit County Community Based Correctional Facility. Providing prisons, jails and equivalent correctional facilities has always been a governmental function in Ohio. Only recently have private prisons been authorized and used. However, the role of corrections and running corrections facilities has remained primarily a governmental function.

{¶8} On the other hand, the providing of insurance, with the exception of running a workers' compensation system, has not traditionally been a governmental function in Ohio. Insurance has traditionally been provided by private entities such as Nationwide Insurance and Grange Mutual.

{¶9} Our magistrate carefully and accurately applied the *Oriana House* case to the facts presented in CORSA's situation. We do not need to reiterate all of his points here.

{¶10} We overrule the objections to the magistrate's decision. We adopt the findings of fact and conclusions of law contained in the magistrate's decision. As a result, we refuse to grant the requested writs of mandamus.

Objections overruled; writs denied.

BRYANT and BROWN, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Greg A. Bell,	:	
Relator,	:	Nos. 09AP-861
v.	:	09AP-944
David W. Brooks,	:	09AP-1055
Respondent.	:	(REGULAR CALENDAR)

MAGISTRATE'S DECISION

Rendered on June 24, 2010

Philip Wayne Cramer, for relator.

Isaac, Brant, Ledman & Teetor LLP, Mark Landes and Mark H. Troutman, for respondent.

IN MANDAMUS

{¶11} In these three original actions, relator, Greg A. Bell, requests writs of mandamus ordering respondent, David W. Brooks, to provide alleged public records of the County Risk Sharing Authority ("CORSA") pursuant to the Public Records Act, R.C. 149.43 et seq.

Findings of Fact:

{¶12} 1. On September 3, 15, and 28, 2009, relator hand delivered written requests for public records at CORSA's offices located at Columbus, Ohio. The September 3, 2009 request was dated September 2, 2009.

{¶13} 2. The September 3, 2009 request, at paragraph 2, sought the following:

All financial records relating to contract(s) between CORSA and Madison County, Ohio, including but not limited to: all invoices sent to Madison County; all records showing allocation of Madison County payments into CORSA financial accounts and sub-accounts; CORSA's chart of accounts; all records showing disbursements from CORSA financial accounts as payments to third-parties in performance of the contract(s) with Madison County.

{¶14} 3. By letter dated September 10, 2009, David W. Brooks, acting as CORSA's managing director, informed relator:

You have requested various items from CORSA pursuant to Sections 149.43 and 149.431 of the Revised Code. This is to inform you that CORSA is a private corporation and is not a "public office" under Section 149.43. However, Madison County is a public office, and Madison County obviously has CORSA Participation Agreements, Coverage Agreements, and annual program cost invoices in its possession. Therefore, as a matter of convenience, we have enclosed copies of Participation Agreements, Coverage Agreements, and invoices * * *.

* * * CORSA's financial records that are referenced in paragraph two of your Public Records Request List, other than the Madison County invoices, are not public records and we decline to provide them to you.

{¶15} 4. Relator's September 15, 2009 request sought the following: "All minutes of every meeting of the CORSA board of trustees, for the period from January 1, 1999 up to and including the most recently convened meeting."

{¶16} 5. By letter dated September 21, 2009, CORSA's counsel informed relator:

* * * CORSA is not a public office under R.C. 149.43. The Supreme Court held that an entity such as CORSA is not a public entity. See *State ex rel. Oriana House, Inc. v. Montgomery* (2006), 110 Ohio St.3d 456, 854 N.E.2d 193.

Your request for meeting minutes is not authorized under any other law. As a result, CORSA will not be producing documents or a public records retention schedule.

{¶17} 6. Relator's September 28, 2009 request sought the following: "All compensation records for CORSA executive and administrative staff during the period from January 1, 1999 up to and including the records indicating the present compensation amounts."

{¶18} 7. By letter dated September 29, 2009, CORSA's counsel informed relator:

* * * CORSA is not a public office under R.C. 149.43. The Supreme Court held that an entity such as CORSA is not a public entity. See *State ex rel. Oriana House, Inc. v. Montgomery* (2006), 110 Ohio St.3d 456 * * *.

Your request for compensation records for CORSA executive and administrative staff from January 1, 1999, up to and including the present, is not authorized under any other law. As a result, CORSA will not be producing documents in response to this request.

{¶19} 8. On September 15, October 6, and November 10, 2009, relator filed mandamus actions against respondent pursuant to the Public Records Act, R.C. 149.43.

{¶20} 9. Following the filing of answers to the complaints, respondent moved to consolidate the actions. Following a January 19, 2010 magistrate's conference with counsel for the parties, the magistrate issued an order on January 20, 2010

consolidating the three actions for purposes of discovery, the filing of evidence, and the filing of briefs. At the conference, relator's counsel indicated to the magistrate that he had served respondent's counsel with requests for admissions, and that no further discovery would be initiated.

{¶21} 10. The magistrate's order of January 20, 2010 set a discovery cut-off date and a schedule for the filing of evidence and briefs relating only to the issue of whether CORSA "is a public office for purposes of the public records act." All evidence was ordered to be filed no later than March 22, 2010.

{¶22} 11. Notwithstanding the provisions of the magistrate's order of January 20, 2010 for the filing of a stipulation of evidence by March 22, 2010, the parties have not filed a stipulation of evidence.

{¶23} 12. Rather, on March 22, 2010, each party filed his own documents without the other party's stipulation as to those documents.

{¶24} 13. On March 22, 2010, relator filed what he has captioned as "Notice of Relator's Summary of Evidence." Attached as exhibit B is respondent's answers to relator's requests for admissions. Attached as exhibit C is a copy of a July 31, 2009 "Independent Auditors' Report" prepared for CORSA by the accounting firm of Deloitte & Touche, LLP. The report is 22 pages in length.

{¶25} 14. On March 22, 2010, respondent filed what he has captioned "Notice by Respondent of the Filing of Evidence." In actuality, respondent's evidence is respondent's five-page affidavit executed March 18, 2010, consisting of 24 enumerated paragraphs with attached exhibits A through J.

{¶26} Respondent's affidavit states in part:

2. I serve as the Managing Director, Property and Casualty Insurance, for the County Risk Sharing Authority (CORSA). I have had the responsibilities of this position since June 19, 1995, although the title of the position has changed on several occasions since 1995.

3. In this capacity, I oversee CORSA's activities in assisting its clients pursuant to CORSA's Mission:

The mission of the County Risk Sharing Authority (CORSA) is to provide members with comprehensive property and liability coverage and high quality risk management services at a stable and competitive cost.

CORSA's Mission Statement will be achieved through the following objectives:

- Utilize the highest standards of ethics, oversight, and transparency in all processes and decisions.
- Offer property and liability coverage that is specifically designed to meet the unique and changing needs of county government.
- Provide a stable, financially secure, and competitive risk financing system.
- Provide cost-effective claims administration and litigation management.
- Provide comprehensive loss control and loss prevention services.
- Provide expertise, education, and training on risk management issues impacting Ohio County Government.

4. The General Assembly authorized counties to use risk sharing pools such as CORSA in legislation enacted on November 20, 1985.

5. CORSA incorporated as a joint self insurance pool on April 2, 1987.

6. CORSA began operating on May 12, 1987 as a joint self insurance pool.
7. At its inception, CORSA contracted with a third-party administrator to administer claims.
8. Effective July 1, 2006, CORSA began handling all of its claims in-house.
9. CORSA operates like an insurance company for its public clients, except that it pools its clients' resources rather than charging premiums.
10. CORSA receives contributions from its members based upon rates set by CORSA's actuaries and reinsurers in the regular course of its business operation, without the use of any tables or equations set by Ohio law.
11. CORSA manages these funds to cover the costs of first party property losses, legal representation, defense costs, claim adjusting, settlement, or judgments against its member counties within the limits agreed upon with its members. These claims include everything from automobile collision cases to all types of civil litigation in which our clients become involved.
12. CORSA negotiates its agreements with its members individually, both in terms of coverage and contributions toward the funds for that coverage.
13. Neither the State of Ohio nor any other government entity regulates CORSA's day-to-day business operations.
14. No outside entity oversees the day-to-day operations of CORSA, which is operated by an independent board of directors voted upon by members.
15. No governmental entity created CORSA.
16. The County Commissioners Association of Ohio (CCAO) created CORSA.
17. CORSA was created solely to provide coverage and risk management services to its members.

18. CORSA's member counties also retain some copies of records in the possession of CORSA, which are available by making a public records request to CORSA's individual members.

19. CORSA maintains its offices at 209 East State Street, Columbus, Ohio 43215.

20. CORSA is a private, non-profit corporation organized under R.C. 1702.01, *et seq.*

{¶27} 15. On June 2, 2010, this matter was submitted to the magistrate for his written decision based upon the evidence submitted by the parties and their briefs.

Conclusions of Law:

{¶28} The issue is whether relator has shown by clear and convincing evidence that CORSA is a public institution under R.C. 149.011(A) and is, thus, the functional equivalent of a public office.

{¶29} Finding that relator has failed to show by clear and convincing evidence that CORSA is a public institution under R.C. 149.011(A), it is the magistrate's decision that this court deny relator's request for a writ of mandamus in the three consolidated original actions, as more fully explained below.

{¶30} The syllabus of *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854, states:

1. Private entities are not subject to the Public Records Act absent a showing by clear and convincing evidence that the private entity is the functional equivalent of a public office.

2. In determining whether a private entity is a public institution under R.C. 149.011(A) and thus a public office for purposes of the Public Records Act, R.C. 149.43, a court shall apply the functional-equivalency test. Under this test, the court must analyze all pertinent factors, including (1)

whether the entity performs a governmental function, (2) the level of government funding, (3) the extent of government involvement or regulation, and (4) whether the entity was created by the government or to avoid the requirements of the Public Records Act.

{¶31} "'Public record' means records kept by any public office." R.C. 149.43(A)(1). "'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." R.C. 149.011(A).

{¶32} In the absence of a precise legislative definition of what constitutes a public institution and thus a public office subject to R.C. 149.43, the court, in *Oriana*, adopted the functional equivalency tests. *Oriana* at ¶21, 24. Applying the test requires a case-by-case analysis examining all pertinent factors with no single factor being dispositive. *Id.* at ¶23.

{¶33} The functional equivalency analysis begins with the presumption that private entities are not subject to the Public Records Act absent a showing by clear and convincing evidence that the private entity is the functional equivalent of a public office. *Oriana* at ¶26.

{¶34} R.C. 2744.081 provides for joint self-insurance pools. Thereunder, the statute provides:

Regardless of whether a political subdivision, under section 2744.08 of the Revised Code, secures a policy or policies of liability insurance, establishes and maintains a self-insurance program, or enters into an agreement for the joint administration of a self-insurance program, the political subdivision may, pursuant to a written agreement and to the extent that it considers necessary, join with other political subdivisions in establishing and maintaining a joint self-

insurance pool to provide for the payment of judgments, settlement of claims, expense, loss, and damage that arises, or is claimed to have arisen, from an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function and to indemnify or hold harmless the subdivision's employees against such loss or damage.

* * *

(C) * * * A joint self-insurance pool, established under this section, is deemed a separate legal entity for the public purpose of enabling the members of the joint self-insurance pool to obtain insurance or to provide for a formalized, jointly administered self-insurance fund for its members. An entity created pursuant to this section is exempt from all state and local taxes.

{¶35} Initially, in his merit brief, relator puts forth a proposition based upon R.C. 2744.081 and respondent's answers to relator's requests for admissions that does not invoke or discuss the functional equivalency test. (Relator does not mention the *Oriana* functional equivalency test in his merit brief.)

{¶36} CORSA provided the following answers to relator's requests for admissions numbered 4, 7, 8, 11, and 12:

4) CORSA admits that it is a joint self-insurance pool, established under the Ohio Revised Code § 2744.081, which is deemed a separate legal entity for the public purpose stated under Division C of said statute, enabling the political subdivision members of the joint self-insurance pool to obtain insurance or to provide for a formalized, jointly-administered self-insurance fund for its members.

ANSWER: CORSA admits that it is established under R.C. 2744.081. Deny to the extent that Relator's Request does not conform to the language in this statute. CORSA denies all remaining aspects of this Request not specific[ally] admitted herein.

* * *

7) CORSA admits that it requested and was granted a private letter from the Internal Revenue Service dated on July 20, 1989, exempting it from federal tax under Section 115 of the Internal Revenue Code based upon its status as a political subdivision, or instrumentality of government.

ANSWER: CORSA admits that its risk management and insurance services to political subdivisions have been recognized by the Internal Revenue Service to allow it to be tax-exempt as an "instrumentality" of government, as are all such risk-sharing pools throughout the United States. Rev. Rul. 90-74. CORSA admits that it also received a private letter ruling dated July 20, 1989. CORSA denies all remaining aspects of this Request not specific[ally] admitted herein.

8) CORSA admits that since it received its Section 115 exemption, based upon its status as an instrumentality of government from the IRS in 1989, CORSA has never filed an Informational Tax Return on Form 990, which would otherwise be due annually and has no evidence to the contrary.

ANSWER: CORSA denies this Request because the Request is unclear. To the extent that the Request asks whether CORSA has filed a Form 990, the Request is admitted, as it is not required.

* * *

11) CORSA admits that Deloitte Touche LLP used generally acceptable auditing standards applicable in *Government Auditing Standards* and the Government Accounting Standards Board in performing its independent audit of CORSA.

ANSWER: CORSA admits to the extent supported in the attached audit report. CORSA denies all remaining aspects of this Request not specific[ally] admitted herein.

12) CORSA admits that the Deloitte Touche LLP Independent Audit Report for year ending April 30, 2009 was

provided to the Auditor of State in order to facilitate the State's auditor's obligations to audit CORSA.

ANSWER: Admit to this extent that this Request does not suggest that the Auditor reviews CORSA for compliance with R.C. Ch. 149 because the Auditor specifically disclaims that it audits CORSA for any public records or other compliance with state statutes, as indicated in the attached documentation. CORSA denies all remaining aspects of this Request not specific[ally] admitted herein.

{¶37} Citing the above-quoted answers to his requests for admissions and pointing particularly to respondent's admission that CORSA is established under R.C. 2744.081 and that the statute deems CORSA to be a "separate legal entity," relator somehow concludes that CORSA is a public office under R.C. 149.43.

{¶38} Relator does not actually explain how relator's answers to the requests for admissions, as well as the statute, logically lead to the conclusion that CORSA is a public office under R.C. 149.43.

{¶39} While analysis under the functional equivalency test may begin with a review of R.C. 2744.081, and the answers to the requests for admissions, analysis cannot abruptly end there without application of the functional equivalency test. Relator proposes in his merit brief that this court need look no further than R.C. 2744.081 and respondent's answers to his requests for admissions to establish CORSA as a public office. The proposition lacks merit.

{¶40} The first discussion of the functional equivalency test occurs in respondent's brief. Not until his reply brief does relator argue that the evidence shows that CORSA is a public office under the functional equivalency test. Respondent did not seek leave to file a surreply and, thus, we do not have a written response from

respondent as to relator's arguments under the functional equivalency test. Notwithstanding that scenario, it is clear that relator has failed to show by clear and convincing evidence that CORSA is the functional equivalent of a public office.

A. GOVERNMENT FUNCTION

{¶41} In the *Oriana* case, Oriana House controlled the day-to-day operations of the Summit County Community-Based Correctional Facility ("CBCF"). Noting that the administration of prisons has traditionally been a uniquely governmental function, the court concluded that Oriana House, the entity at issue under the Public Records Act, was performing a historically governmental function.

{¶42} Arguing that, unlike the scenario in *Oriana*, CORSA does not perform a historically governmental function, respondent points to his affidavit stating that CORSA's mission is "to provide members with comprehensive property and liability coverage and high quality risk management services at a stable and competitive cost."

{¶43} Also, CORSA performs cost of defense analyses to decide when and how to settle cases. CORSA also provides loss control and risk management services for its members.

{¶44} Relator counters:

* * * It is irrelevant that private corporations doing an insurance business perform similar functions for their customers. No private corporation has the duty to provide liability coverage and risk management for county subdivisions or employees, and thus, CORSA's operation can only constitute a public function of county governments. * * *

(Reply brief, at 3.)

{¶45} In the magistrate's view, that CORSA was established to provide liability coverage and risk management solely to its county members does not compel the conclusion that CORSA is a historically governmental function. To the contrary, liability coverage and risk management are services traditionally provided by private entities, i.e., insurance companies. Thus, CORSA provides to its members a service that is traditionally understood to be a private function—not a governmental function.

{¶46} Thus, the magistrate concludes that CORSA does not perform a historically governmental function under the functional equivalency test.

B. LEVEL OF GOVERNMENT FUNDING

{¶47} Oriana House received 100 percent of the Summit County CBCF's revenues and, in 2001, approximately 88 percent of Oriana House's total revenues came from public sources. The court concluded that the level of government funding is "significant." *Oriana* at ¶32.

{¶48} However, that a private entity receives government funds does not, by itself, convert the entity into a public office for purposes of the Public Records Act. *Oriana* at ¶29.

{¶49} Here, in his reply brief, relator asserts:

* * * CORSA is almost completely funded—most recently, at 99.73%—by county-originated, public funds. *To wit*, for the fiscal year ended April 30, 2009, "Member contributions (less commercial insurance)" amounted to \$18,129,918, "Net Investment income" was \$2,262,121, and an "Other" source was \$54,354, for a total of \$20,446,393. * * *

(Reply brief, at 4.)

{¶50} In support of the above assertion, relator's cites to exhibit C of his "Notice of Relator's Summary of Evidence." As earlier noted, exhibit C is a copy of a July 31, 2009 "Independent Auditor's Report" prepared for CORSA.

{¶51} Even if relator can prove that the level of governmental funding is significant, as was the case in *Oriana*, that, by itself, does not convert CORSA into a public office.

C. EXTENT OF GOVERNMENT INVOLVEMENT OR REGULATION

{¶52} Oriana House is a private, nonprofit Ohio corporation that was first incorporated in 1981. Oriana House has a six-member board of directors; none of the directors holds public office. *Oriana* at ¶6. By statute, each county's CBCF shall be administered by a judicial corrections board ("JCB") which is comprised of judges of the common pleas court. *Id.* at ¶2. But the Summit County JCB has permitted Oriana House to operate the CBCF without oversight. *Id.* at ¶6. The *Oriana* court concluded: "There is no evidence here that any government entity controls the day-to-day operations of Oriana House. * * * The record clearly establishes that Oriana House is an independent, private corporation." *Id.* at ¶33.

{¶53} CORSA was incorporated as a nonprofit Ohio Corporation on April 2, 1987. (See complaint and attached copy of the Articles of Incorporation.) The third paragraph of CORSA's Articles of Incorporation states:

The purposes for which the corporation is formed is any purpose not involving pecuniary gain or profit for which natural persons may lawfully associate themselves including but not limited to, the creation of a group self-insurance program (the "pool") comprised of counties contracting for the administration, claims management, loss control and the

procurement of insurance that will be purchased by the pool and performing those functions authorized by Sections 2744.08 and 2744.081 of the Ohio Revised Code.

{¶54} According to the Brooks affidavit, CORSA began operating on May 12, 1987 as a joint self-insurance pool. CORSA was created by the County Commissioners Association of Ohio. It maintains its offices at Columbus, Ohio.

{¶55} Again, according to the Brooks affidavit:

13. Neither the State of Ohio nor any other government entity regulates CORSA's day-to-day business operations.

14. No outside entity oversees the day-to-day operations of CORSA, which is operated by an independent board of directors voted upon by members.

15. No governmental entity created CORSA.

{¶56} According to relator, "CORSA is completely controlled and overseen by government officials." (Reply brief, at 4.) But relator offers no factual or evidentiary support for this assertion.

{¶57} Rather, relator points to R.C. 2744.081(F):

A public official or employee of a political subdivision who is or becomes a member of the governing body of a joint self-insurance pool in which the political subdivision participates is not in violation of division (D) or (E) of section 102.03, division (C) of section 102.04, or section 2921.42 of the Revised Code as a result of the political subdivision's entering under this section into the written agreement to participate in the pool or into any contract with the pool.

{¶58} R.C. 2744.081(F) exempts a public official or employee of a political subdivision who becomes a member of the governing body of a joint self-insurance pool in which the political subdivision participates from any violation of certain statutes. However, R.C. 2744.081(F) does not state, as relator seems to suggest, that only a

public official or employee of a political subdivision may become a member of the governing body of a joint self-insurance pool.

{¶59} We do not have evidence in these three actions as to who are the members of CORSA's governing body. At best, we have the Brooks affidavit stating, in somewhat conclusory fashion, that CORSA "is operated by an independent board of directors voted upon by members."

{¶60} But even if all of CORSA's board of directors are county commissioners of this state, a fact not proven, in the view of the magistrate, that scenario does not compel the conclusion that CORSA is so controlled by public officials of this state that it is, in effect, an alter ego of a public office.

{¶61} There is no evidence that the county commissioners of any one Ohio county have a controlling vote on CORSA's board of directors. Thus, in that sense, it can perhaps be said that the board of directors operates independently of any one county board of commissioners.

{¶62} In any event, relator's failure to present evidence as to CORSA's governing body is a factor leading to the conclusion that CORSA is not an alter ego of any public office of this state.

D. CREATION OF ENTITY

In the *Oriana* case, the court states:

Oriana House was created as a private, nonprofit corporation. It was not established by a government entity. Further, nothing in the record indicates that Oriana House, which was incorporated prior to the creation of CBCFs, was created as the alter ego of a governmental agency to avoid the requirements of the Public Records Act.

Id. at ¶34.

{¶63} CORSA was created as a private nonprofit corporation. It was created by the County Commissioners Association of Ohio. There is indeed no evidence that CORSA was created as the alter ego of a governmental agency to avoid the requirements of the Public Records Act.

E. WEIGHING THE FACTORS

{¶64} Perhaps one factor can be said to favor relator's position. That factor is the level of government funding to CORSA. However, the other three factors are clearly not in favor of relator's position. Accordingly, the magistrate must conclude that relator has failed to show by clear and convincing evidence that CORSA is a public institution subject to the Public Records Act.

{¶65} Accordingly, based upon the above analysis, it is the magistrate's decision that this court deny relator's requests for writs of mandamus in all three of these consolidated actions.

/s/Kenneth W. Macke
KENNETH W. MACKE
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically

objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).