

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Lambert Dehler,	:	
Relator,	:	
v.	:	No. 09AP-703
Terry Collins, Director of the Ohio Department of Rehabilitation and Correction et al.,	:	(REGULAR CALENDAR)
Respondents.	:	

D E C I S I O N

Rendered on November 9, 2010

Lambert Dehler, pro se.

*Richard Cordray, Attorney General, and Ashley D. Rutherford,
for respondents.*

IN MANDAMUS
ON OBJECTIONS TO MAGISTRATE'S DECISION

TYACK, P.J.

{¶1} Lambert Dehler filed this action in mandamus seeking a writ of mandamus to compel various employees of the Ohio Department of Rehabilitation and Corrections ("ODRC") to provide him records related to the purchase of peanut butter for Trumbull Correctional Institution ("TCI").

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings. After various filings by the parties, the magistrate issued a magistrate's decision which contains detailed findings of fact and conclusions of law, and is appended to this decision. The magistrate's decision includes a recommendation that we deny the request for a writ.

{¶3} Dehler has filed objections to the magistrate's decision. The case is now before the court for review.

{¶4} Dehler was an inmate at TCI in 2009 when a scare about salmonella poisoning in peanut butter occurred. Dehler wanted information about the peanut butter he and other inmates were eating or had eaten. He made several demands for public records, but was unsuccessful in obtaining the records regarding peanut butter purchases which he sought. As a result, he filed this mandamus action.

{¶5} Dehler itemizes four objections to the magistrate's decision:

Objection No. 1:

Dehler requests that Respondent Collins be replaced and substituted by the new Director of the DRC, to wit: Ernie Moore.

Objection No. 2:

Dehler objects to the Magistrate refusing to adequately address Claim I. Claim I was regarding the Director of the DRC, Moore, to process Relator's Request for Public Records.

Objection No. 3:

This objection primarily pertains to Claim II, whereby the Magistrate improperly decided issues of fact by making purely factual determinations of belief and credibility,

contrary to the legal standards of review to be applied on summary judgment.

Objection No. 4:

Dehler objects to the Magistrate not applying the current public records law to his case as amended by 2006 H.B. No. 9, effective 9-29-07. On 9/29/07, the public records law was amended to include additional wording added in R.C. § 149.43 (B)(2), which provides that the public records requester must be provided an opportunity to revise his request if the initial request was "ambiguous or overly broad." *ibid*. In the case at bar, the Magistrate erred by not finding that Dehler was "working together" with Respondents every step of the way, but was spurned each time in violation of R.C. 149.43(B)(2).

{¶6} As to the first objection, the court notes that Terry Collins has retired as the director of ODRC. This removes Collins from any personal obligation to provide public records to Dehler. In light of our findings below, the identity of the director of ODRC is irrelevant. This "objection" is not really an objection and is overruled.

{¶7} As to the second objection, the magistrate correctly found that venue for this mandamus action was appropriate in Franklin County because the director of ODRC has his primary office in Franklin County and could thus be subject to a writ to compel the release of records. We are not prepared to adopt the magistrate's statement "[i]t can be further noted that respondents seem to suggest that jurisdiction must lie in the county where the requested records are physically stored. Even if it can be successfully argued that R.C. 149.43(C)(1) sets forth a jurisdictional requirement for the filing of the mandamus action, the language of R.C. 149.43(C)(1) does not state, nor even infer, that jurisdiction only lies in the county where the requested records are stored," since it goes beyond the issues in this case.

{¶8} Dehler has no personal knowledge about what, if any, records regarding peanut butter purchases are maintained at the home offices of ODRC. We, as a court, cannot issue a writ of mandamus on nothing more than Dehler's belief, based upon 18 years of incarceration, that such records exist in the home office.

{¶9} The magistrate was correct to deny a writ of mandamus with respect to any theorized records involving peanut butter being housed in Columbus.

{¶10} Apparently, some records about peanut butter purchases for TCI do exist, but the practical aspects of providing such records to Dehler made the provision of the records challenging at best. With Dehler's transfer to Mansfield Correctional Institution, providing the records has transitioned from challenging at best to close to impossible.

{¶11} While Dehler was housed at TCI, the institution could only provide the records requested by duplicating a large number of documents or by providing Dehler extended access to the original documents. The staffing levels at TCI were such that the warden there could not assign a correctional officer to full-time duty of watching over Dehler's shoulder while Dehler waded through all the purchase orders regarding food for TCI to find the orders regarding peanut butter purchases.

{¶12} The cost of duplicating such a huge number of food purchase documents was prohibitive.

{¶13} Further, Dehler and all other inmates are only allowed to store a very limited number of items in their cells. TCI, with the overcrowding of inmates in Ohio being what it is, could not set aside a separate room or rooms to house the duplicated documents until Dehler could make a complete review.

{¶14} Dehler objects repeatedly to the magistrate's accepting of various affidavits filed in this action, as if the affidavits were used in deciding a summary judgment motion. The magistrate recommended that we overrule the motion to dismiss, converted to a summary judgment motion. The magistrate then went on to address the merits of the case based upon the evidence before him.

{¶15} The second and third objections are overruled.

{¶16} We see no basis for the allegation that the magistrate did not apply current public record laws to this case. We therefore overrule the fourth objection.

{¶17} We adopt the findings of fact and conclusions of law contained in the appended magistrate's decision with the exception of the comment on pages 21 and 22 set forth above. For the reasons set forth in the magistrate's decision, as supplemented herein, we deny the request for a writ of mandamus.

Objections overruled; writ denied.

BRYANT and SADLER, JJ., concur.

A P P E N D I X

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Lambert Dehler,	:	
	:	
Relator,	:	
	:	
v.	:	No. 09AP-703
	:	
Terry Collins, Director of the Ohio	:	(REGULAR CALENDAR)
Department of Rehabilitation and	:	
Correction et al.,	:	
	:	
Respondents.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on August 11, 2010

Lambert Dehler, pro se.

Richard Cordray, Attorney General, and Ashley D. Rutherford,
for respondents.

IN MANDAMUS

{¶18} In this original action, relator, Lambert Dehler, formerly an inmate of the Trumbull Correctional Institution ("TCI"),¹ requests a writ of mandamus ordering respondents, director of the Ohio Department of Rehabilitation and Correction ("ODRC")

¹ Relator is currently an inmate of the Mansfield Correctional Institution.

and three other ODRC employees, to produce public records for inspection and copying pursuant to the Public Records Act, R.C. 149.43.

Findings of Fact:

{¶19} 1. On July 20, 2009, relator, while incarcerated at TCI, filed this mandamus action pursuant to R.C. 149.43.

{¶20} 2. Respondent Terry Collins is the ODRC director.

{¶21} 3. Respondent Robbyn Ware is the TCI warden's assistant.

{¶22} 4. Respondent Jacqueline Scott is alleged in the complaint to be the TCI business office administrator.²

{¶23} 5. Respondent Reamensnyder is alleged in the complaint to be the TCI food service manager.³

{¶24} 6. According to the complaint, on February 17, 2009, relator submitted an Informal Complaint Resolution ("ICR") to Reamensnyder on a form provided by ODRC. The ICR form is apparently used by ODRC to facilitate its inmate grievance procedure pursuant to Ohio Adm.Code 5120-9-31.

{¶25} 7. On the February 17, 2009 ICR to Reamensnyder, relator wrote:

Enclosed, please find a newspaper clipping from 2/12/09 about the Salmonella problem with peanut butter.

Therefore, I am requesting public records pursuant to R.C. 149.43. I am requesting on today's date a copy of all food service records showing peanut butter ordered and received from 1/1/2006 through 2/17/09, including copies of any

² Respondent Scott does not identify her official position at TCI in any of the documents filed by respondents.

³ Respondent Reamensnyder does not identify her official position at TCI in any of the documents filed by respondents.

notes, correspondence (electronic or otherwise), memorandum, or any other record pertaining to the recall of peanut butter.

{¶26} 8. On February 20, 2009, on the lower section of the ICR form, Reamensnyder wrote:

I have been informed about the peanut butter recall. The FDA was here last week and inspected [illegible] where we store food. We do not nor have we ever had any of the recalled product.

{¶27} 9. According to the complaint, on February 24, 2009, relator submitted a Notification of Grievance ("NOG") on an ODRC form. Apparently, the NOG was filed with the TCI inspector of institutional services pursuant to Ohio Adm.Code 5120-9-31(K)(2). The NOG requests that the inspector of institutional services order Reamensnyder "to provide a copy of all the public records requested."

{¶28} 10. According to the complaint, on May 1, 2009, the TCI inspector of institutional services issued his Disposition of Grievance ("DOG") on an ODRC form.

The DOG states:

In your complaint[,] you state you are requesting public records from food service.

* * *

You were informed in disposition 03-09-000045 how to obtain public records. You must make your request to Ms. Ware, Warden's Assistant, public information officer (PIO), for copies of public records.

There was no violation to any policy, rule, or law.

Therefore[,] your complaint is DENIED and this office will take no further action.

(Emphasis sic.)

{¶29} 11. According to the complaint, on May 5, 2009, relator appealed the May 1, 2009 DOG to the office of chief inspector. In his appeal, relator asserted:

* * * On 5/1/09[,] the IIS [inspector of institutional services] denied my request * * *, and stated that I must re-submit a request to Ms. Ware (the TCI Warden's Assistant). I would like you to find that Ms. Ware already looked at the request and gave me the run-around: Enclosed you will find a letter dated 3/6/09 from Ms. Ware. I would like you to find that her reply was non-responsive, and order her to immediately allow me to inspect the Food Service records requested. (She sent that letter to me in response to my request to Terry Collins.)

{¶30} 12. According to a filing by relator in this action, on July 7, 2009, the office of chief inspector issued its decision regarding relator's May 5, 2009 appeal. The decision of the office of chief inspector states:

You complain of not receiving public information on food service. You state your request for this information was denied. This office finds the disposition of the Inspector to be clear and accurate. There were no violations of policy or administrative rule on the part of staff in this instance. As such, I find the Inspector has appropriately responded to your complaint.

{¶31} 13. According to the complaint filed in this action, earlier, on March 2, 2009, relator mailed a letter to ODRC at its central offices located in Columbus, Ohio. The letter states:

I am requesting public records pursuant to R.C. 149.43. I need the following records which are maintained by the Trumbull Correctional Institution ("TCI"), Food Service Department:

All food service records maintained at TCI which show peanut butter orders and the receipt of same from 1/1/2006

through 2/17/2009, **including** copies of any notes, correspondence (electronic or otherwise), memorandum, or any other record pertaining to the recall of peanut butter.

(Emphasis sic.)

{¶32} 14. According to a filing by relator in this action, by letter dated March 6, 2009, Ware informed relator:

I am in receipt of your request that you forwarded to Legal Services regarding records in our Food Service Department. As stated previously, you must be specific in your request. The staff is only obligated to make records available as they are kept in the normal course of business. We do not have an obligation to perform research or create new files in responding to a public record request. Please refer to the Public Records Policy 07-ORD-02, prior to submitting further requests of public records.

{¶33} 15. According to the complaint, on May 18, 2009, relator submitted an ICR to Ware that stated:

On 5/7/09, I sent you a letter and said that I want to work with you to obtain the public records from Food Service at TCI. I did not hear anything back from you.

To make the request easier for the both of us, I am offering to first inspect the requested records before copies have to be made. If you do not understand my request, then could you work with me on this?

In grievance number TCI-05-09-000046, the IIS said to contact you again. Here is what I need to inspect and/or copy:

All TCI food service public records pursuant to R.C. 149.43 showing peanut butter ordered and received from 1/1/2006 through 2/17/09, including copies of any notes, correspondence (electronic or otherwise), memorandum, or any other record pertaining to the recall of peanut butter.

Thank you for any prompt assistance you are willing to offer to help indentify the records I need.

{¶34} 16. According to the complaint, on June 4, 2009, relator filed an NOG with the TCI inspector of institutional services. Relator asserted:

On 6/1/09, I met with Ms. Ware and Ms. Scott regarding my public record request to obtain public records from TCI Food Service. I found out that the TCI record retention rule requires records to be maintained for three years. If true, I agreed to only ask for public records for the past three years from Food Service. I want to work together with you to resolve this request for public records.

During the 6/1/09 meeting, I expressed a desire to first inspect the public records before copies have to be made to eliminate any wasteful copying of records I may not need. In return, several old excuses were offered (undue hardship, lack of staff, too time consuming, etc.), so I am not sure if my request for public records is going to be granted. The staff was going to check with the DRC attorney and get back with me.

{¶35} 17. According to the complaint, on June 17, 2009, the TCI inspector of institutional services issued his DOG regarding relator's June 4, 2009 NOG. The June 17, 2009 DOG states:

In your complaint[,] you state you have requested release of information from food service on 2/17/09. The information you request is over the past three years. You have been given excuses and feel to expedite the process you should be allowed to inspect the items requested to sort through what you would actually like copied.

During my investigation of your complaint[, I] spoke with Ms. Ware, Warden's Assistant/Public Information Officer. I have also reviewed her informal complaint response.

Staff action is valid exercise of discretion.

Staff is working with you on obtaining your requested copies.

Therefore[,] your complaint is DENIED and this office will take no further action.

(Emphasis sic.)

{¶36} 18. According to the complaint, on June 18, 2009, relator appealed the June 17, 2009 DOG to the office of chief inspector.

{¶37} 19. According to a filing from relator, on June 23, 2009, the office of chief inspector issued its decision regarding relator's appeal of the June 17, 2009 DOG. The decision states:

You complain of sending a letter for public information from food services, which was denied. The Inspector's disposition has stated staff personnel are working with you for the information you wanted. As such, I find the Inspector has appropriately responded to your complaint.

{¶38} 20. On August 21, 2009, respondents filed their answer to the complaint that relator has filed in this action.

{¶39} 21. On September 4, 2009, the magistrate issued an order setting forth a schedule for filing evidence and the briefs of the parties. Pursuant to the magistrate's order, the evidence was to be filed no later than September 23, 2009.

{¶40} 22. On September 23, 2009, relator filed in this action a document captioned "Filing of Certified Evidence." Through his own affidavit, relator attempts to certify the documents presented in the September 23, 2009 filing. There is no certification or stipulation from respondents.

{¶41} 23. Earlier, on August 12, 2009, relator filed in this action a document captioned "Relator's Filing of Chief Inspector's Final Decisions Proving Lack of an Adequate Remedy with Affidavit."

{¶42} 24. On October 2, 2009, relator filed his merit brief in this action.

{¶43} 25. On October 23, 2009, respondents filed their merit brief in this action.

However, attached to respondents' brief is the affidavit of Robbyn Ware executed October 23, 2009. The October 23, 2009 Ware affidavit avers:

1. My name is Robbyn Ware and I am the Warden's Assistant for the Trumbull Correctional Institution ("TCI"). I have been employed with the ODRC in this capacity since January 14, 2001. I have personal knowledge of the information set forth in this affidavit, and I am competent to testify to the matters stated herein.

2. As part of my duties as Warden's Assistant, I monitor legal issues and cases regarding inmates and staff.

3. On February 17, 2009, Inmate Lambert Dehler filed an Informal Complaint Resolution to Food Services regarding salmonella and a peanut butter recall. Dehler also made a public records request for all food service records showing peanut butter ordered and received from 1/1/06 through 2/17/09. On February 20, 2009, Food Services responded that the FDA had previously inspected all areas where food was stored and it was found that TCI had never had any of the recalled product.

4. On March 2, 2009, Dehler sent, via certified mail, a public records request to the Ohio Department of Rehabilitation and Corrections (ODRC) Central Office, requesting all food service records maintained at TCI showing peanut butter orders and receipts for the orders from 1/1/06 through 2/17/09, including any notes, correspondence (electronic or otherwise), memorandum, or any other record pertaining to the recall of peanut butter.

5. ODRC's Legal Services forwarded that public records request to me for response. On March 6, 2009, I responded to Dehler, via memo, that he needed to be more specific in his request regarding the peanut butter because the Staff of ODRC would not do research or create new files to respond to a public records request. He was also informed that a

meeting would be scheduled with him in order to help him narrow his request.

6. On June 1, 2009, I spoke with Dehler in housing unit 13 east regarding his public records request. At that time, we discussed the following:

A) I reiterated that there are no records pertaining to the recall of peanut butter because no peanut butter had been recalled from TCI.

B) I asked Dehler to explain to me exactly what he was looking for so that I could help him narrow his search. He refused to tell me and stated that he wanted to review all of the records and he would decide what he needed.

C) I explained to him that although some of the documents may not be public record, TCI would be willing to accommodate him by giving him copies of all of the records as soon as prepayment for the copies of the documents was received. I explained that there are several thousand pages of single page purchase orders. Dehler again refused to compromise and explained that he wanted to go through each and every record himself and choose which records that he would like to copy.

D) I explained to him that this would be difficult to coordinate for many reasons. There is only one account clerk in the business office. In order to allow an inmate to go through original documents in the business office, the account clerk would have to be present to ensure that the original documents stayed organized and preserved. A corrections officer would also have to be present to ensure security. I explained to Dehler that I would have to speak with DRC legal to see if there was any way to coordinate this.

7. I spoke with DRC legal and they explained that there are many security issues with allowing an inmate to examine original documents. There were problems with the security of having an inmate in the business office where female inmates are located. Additionally, there could be potential problems if an original record was damaged, stolen, or misplaced.

8. On June 22, 2009, I wrote Dehler a letter, explaining that I spoke with the legal department and made them aware of his request. I also explained that the records that are available for public review and would not cause disruption of the normal operation of TCI would be provided after payment was received.

9. TCI has tried to accommodate Inmate Dehler. Dehler, however, has been unwilling to cooperate with us and refused our proposed options.

{¶44} 26. On November 5, 2009, relator filed a reply brief. Also, relator submitted his own affidavit executed October 29, 2009. Relator's affidavit avers:

1. I have personal knowledge of the information set forth in this Affidavit and I am competent to testify to the matters stated herein.

2. On October 28, 2009, I received the brief of respondents.

3. I immediately discovered that false "evidence" was attached to their brief and I now counteract pursuant to the order filed by this Court on September 4, 2009, which allowed me to file a reply brief within five days of service of respondents' brief, with additional days for service pursuant to Civ.R. 6(E).

4. The affidavit affixed to their brief made by Robbyn Ware (Exhibit A) therein, contains false statements * * *:

A. It could not be true "[t]hat there are no records pertaining to the recall of peanut butter because no peanut butter had been recalled from TCI." See, "Affidavit of Robbyn Ware" at Exhibit A, ¶6.A. (Hereinafter "Affidavit at ¶6.A.").

The reason this could not be true is because it was previously admitted that, "On February 20, 2009, Food Services responded that the FDA had previously inspected all areas where food was stored and it was found that TCI had never had any of the recalled product." See, Affidavit at ¶3.

Relator asserts that he has been incarcerated since his arrest in April of 1992, and is uniquely qualified and experienced to know that TCI would never allow the FDA to inspect inside the prison without some type of official documentation about the peanut butter recall.

B. It could not be true that Relator refused to tell Ware what he needed in order for her to comply with the public records law. See, Affidavit at ¶6.B.

The reason this could not be true is because Ware later admits "[H]e wanted to review all of the records and he would decide what he needed." See, Affidavit at ¶6.B.

C. It could not be true that Ware explained that, "[s]ome of the documents may not be public recor[d]." See, Affidavit at ¶6.C.

The reason this could not be true is because all of the records Dehler seeks are all public records.

D. It could not be true that "[TCI] would be willing to accommodate him by giving him copies of all the records as soon as prepayment for the copies of the documents was received." See, Affidavit at ¶6.C.

The reason this could not be true is because at no time was Dehler notified that he had to pre-pay in order to obtain public records in this case. Moreover, pursuant to DRC Policy 07-ORD-02.VI.J.1., DRC "[m]ay only charge for the actual cost of making copies." Ware never gave Dehler an estimate or a dollar amount of what the copies would cost.

Another reason this could not be true is because under the same DRC policy at J.3., "Staff shall not charge for copies when the actual cost is two dollars or less." Dehler offered to first inspect the records in order to prevent unnecessary copies. See, Complaint at ¶26.

E. It could not be true that, "Dehler again refused to compromise and explained that he wanted to go through each and every record himself and choose which records that he would like to copy." See, Affidavit at ¶6.C.

The reason this could not be true is because Dehler offered to modify his public record request if he was allowed minimal inspection privileges. See, Complaint, Exhibit E, F, G, I.

In addition, at no time did I make the statement to Ware that I "[w]anted to get through each and every record himself and choose which records that he would like to copy." See, Affidavit at ¶6.C.

F. It could not be true that Ware offered to provide the public records after payment was received. See, Affidavit at ¶8.

The reason this could not be true is that at no time did Ware quote or give any price estimate to obtain public records.

G. It could not be true that, "TCI has tried to accommodate Inmate Dehler. Dehler, however, has been unwilling to cooperate with us and refused our proposed options." See, Affidavit at ¶9.

This could not be true for all of the same reasons given in ¶E, above. In addition, Ware is not the public official holding the public records and is under no legal duty to comply with the public records law. She was appointed to deliberately frustrate my rights to public records. See, Complaint at ¶¶7,8,24,25,30.

{¶45} 27. On February 12, 2010, citing R.C. 149.43(C)(1), respondents moved for dismissal of this action on grounds that this court lacks subject matter jurisdiction. In support of their motion, respondents submitted another affidavit from Robbyn Ware. This affidavit was executed February 11, 2010.

{¶46} 28. On February 17, 2010, the magistrate issued an order converting respondents' February 12, 2010 motion to dismiss to one for summary judgment. The magistrate also gave notice that the motion for summary judgment is set for submission to the magistrate on March 8, 2010.

{¶47} 29. On February 24, 2010, relator filed a "reply" to respondents' February 12, 2010 motion.

{¶48} 30. Earlier, on February 22, 2010, respondents moved the magistrate to reconsider his February 17, 2010 order converting respondents' February 12, 2010 motion to dismiss to one for summary judgment.

{¶49} 31. On February 25, 2010, the magistrate issued an order denying respondents' February 22, 2010 motion for reconsideration.

Conclusions of Law:

{¶50} Preliminarily, the magistrate shall address respondents' February 12, 2010 motion to dismiss converted to one for summary judgment.

{¶51} R.C. 149.43(C)(1) states in part:

If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(1) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

{¶52} In support of their motion, respondents submitted the February 12, 2010

Ware affidavit which avers:

1. My name is Robbyn Ware and I am the Warden's Administrative Assistant for the Trumbull Correctional Institution ("TCI"). I have been employed with the ODRC in this capacity since January 14, 2001. I have personal knowledge of the information set forth in this affidavit, and I am competent to testify to the matters stated herein.
2. As part of my duties as Warden's Administrative Assistant, I monitor legal issues and cases regarding inmates and staff.
3. I also deal with any public records requests involving records kept in the ordinary course of business by TCI.
4. Inmate Dehler made a public records request for all food service records maintained at TCI showing peanut butter orders and receipts for the orders from 1/1/06 through 2/17/09, including any notes, correspondence (electronic or otherwise), memorandum, or any other record pertaining to the recall of peanut butter.
5. All of the documents that Inmate Dehler was requesting are housed in Trumbull County.
6. The majority of the records are located at Trumbull Correctional Institution.
7. Those records that are not at the institution are located in a warehouse in Trumbull County.

{¶53} As earlier noted, relator did not submit an affidavit or evidence to counter Ware's sworn statement that all the records that relator seeks are located in Trumbull County, Ohio. Thus, it is undisputed that the records relator seeks are located in Trumbull County, Ohio.

{¶54} According to respondents, citing R.C. 149.43(C)(1) and Ware's affidavit, this appellate court lacks subject-matter jurisdiction over the instant mandamus action.

According to respondents, only the Trumbull County Court of Common Pleas, the Eleventh District Court of Appeals, or the Supreme Court of Ohio have jurisdiction over this mandamus action. The magistrate disagrees.

{¶55} R.C. 149.43(C)(1) directs the aggrieved person to file the action in the court of appeals for the appellate district "in which division (B) of this section allegedly was not complied with."

{¶56} Here, relator alleges that respondents failed to comply with the following portion of division (B)(1) of the section:

Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time. * * *

{¶57} Here, it was TCI warden's assistant Robbyn Ware who was ultimately assigned the task of working with relator to resolve his public records request. Undisputedly, Ware's June 9, 2009 meeting with relator at TCI occurred in Trumbull County. At that meeting, acting on behalf of ODRC, Ware set forth ODRC's final position on relator's request.

{¶58} Also, undisputedly, TCI food service manager Reamensnyder was involved with relator's request in Trumbull County. Initially, relator submitted his ICR to Reamensnyder on February 17, 2009. Moreover, relator was incarcerated at TCI in Trumbull County and his request related to records allegedly generated at TCI.

{¶59} However, it is further undisputed that the office of respondent Terry Collins, the ODRC director, is located in Franklin County and that, on or about March 2, 2009, relator served his public records request upon Collins at his Franklin County, Ohio office. Thereafter, as indicated by Ware's March 6, 2009 letter, relator's request to Collins was referred to Ware for resolution of the matter.

{¶60} R.C. 5120.01 sets forth the powers and duties of the ODRC director. It states in part: "All duties conferred on the various divisions and institutions of the department by law or by order of the director shall be performed under the rules and regulations that the director prescribes and shall be under the director's control."

{¶61} Undisputedly, respondents Ware, Scott, and Reamensnyder are ODRC employees under the control of director Collins.

{¶62} Because director Collins exercises statutory control and authority over the remaining respondents to this action, it can be alleged that relator is aggrieved by Collins' failure to act under the Public Records Act.

{¶63} Thus, even if R.C. 149.43(C)(1) presents a jurisdictional requirement as respondents assert, jurisdiction resides in Franklin County, Ohio by virtue of R.C. 5120.01 and the location of Collins' office at ODRC.

{¶64} It can be further noted that respondents seem to suggest that jurisdiction must lie in the county where the requested records are physically stored. Even if it can be successfully argued that R.C. 149.43(C)(1) sets forth a jurisdictional requirement for the filing of the mandamus action, the language of R.C. 149.43(C)(1) does not state, nor

even infer, that jurisdiction only lies in the county where the requested records are stored.

{¶65} Given the above analysis, the magistrate denies respondents' February 12, 2010 motion to dismiss that was converted to one for summary judgment.

{¶66} The magistrate shall now address the merits of this action as presented by the parties in their briefs.

{¶67} R.C. 149.43(B)(6) states:

If any person chooses to obtain a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under this division. The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy. Nothing in this section requires a public office or person responsible for the public record to allow the person seeking a copy of the public record to make the copies of the public record.

{¶68} R.C. 149.43(B)(1) provides that, upon request, all public records responsive to the request "shall be promptly prepared and made available for inspection." Nevertheless, it is reasonable to conclude that R.C. 149.43 bestows no right to personally handle the original of a public record. This can be inferred from the

language of R.C. 149.43(B)(6) providing that the public office need not allow the person seeking the public record to make the copies of the public record.

{¶69} Ware determined that the public records relator requested were contained within "several thousand pages of single purchase orders." (October 23, 2009 Ware affidavit at paragraph 6(C).)

{¶70} Relator insisted that he be given the opportunity to "first inspect" all the original records so that he could determine which documents would be copied for him. (See June 4, 2009 NOG.) Such review or inspection by relator would have necessarily allowed him to personally handle the public records at issue.

{¶71} After Ware's discussion with "DRC legal," it was determined that relator's request that he be permitted the time and space to personally review the originals could not be honored because of prison security concerns and the concern that the original records might be damaged, stolen or misplaced. In the magistrate's view, these are legitimate concerns of the ODRC in the context of this case.

{¶72} Pursuant to R.C. 149.43(B)(6), Ware offered to have the records copied for relator upon receipt of payment for the costs of copying. Relator, in effect, rejected this offer by insisting that he be permitted to personally inspect the originals of thousands of documents which would have necessarily allowed him to physically handle the documents.

{¶73} Under such circumstances, respondents did not violate the Public Records Act.

{¶74} Accordingly, for all the above reasons, it is the magistrate's decision that this court deny relator's request for a writ of mandamus. It is further the magistrate's decision that this court deny respondents' February 12, 2010 motion to dismiss that was converted to one for summary judgment.

/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).