



Court of Claims of Ohio

The Ohio Judicial Center
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OHIO DEPARTMENT OF
TRANSPORTATION

Plaintiff/Counter Defendant

v.

E.J. WARD, INC.

Defendant/Counter Plaintiff

Case No. 2014-00405-PR

Judge Patrick M. McGrath

ENTRY

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On October 8, 2014, defendant/counter plaintiff, E.J. Ward, Inc., filed a motion to expedite discovery. In the motion, E.J. Ward states that on May 7, 2014, it made a public records request pursuant to R.C. 149.43, to plaintiff/counter defendant, Ohio Department of Transportation (ODOT), for documents and information regarding the subject matter of the litigation, and that ODOT has been slow to respond, that its eventual response was insufficient, and that the response was not in an organized format.

Civ.R. 34(B)(1) states, in pertinent part:

“The party upon whom the request is served shall serve a written response within a period designated in the request that is not less than twenty-eight days after the service of the request or within a shorter or longer time as the court may allow.”

On October 16, 2014, ODOT filed a response to the motion, in which it argues that ODOT’s response to a public records request is not a valid basis upon which to expedite discovery. The court agrees.

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

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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.*" (Emphasis added.) Claims under R.C. 149.43 must be brought in a court of common pleas, an appellate court, or the Supreme Court.

Thus, although E.J. Ward requested documents through a public records request, this court lacks jurisdiction to enforce any violation of the public records laws, and will not do so as a substitute for discovery. Moreover, the volume of records involved in ODOT's recent production of documents, approximately 6,000 pages, does not lend itself to an order for expedited discovery. Accordingly, E.J. Ward's October 8, 2014 motion is DENIED.



PATRICK M. MCGRATH
Judge

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