

SUPREME COURT OF OHIO

State ex rel. Miller v. Pinkney

2017-Ohio-1335 (Ohio 2017) · No. 2015-0612 · Decided April 12, 2017

SUMMARY

The Supreme Court of Ohio considered a mandamus action seeking offense and incident reports under Ohio's Public Records Act. The court held that certain routine incident reports were not security records and ordered their release with redactions, granting the writ in part and denying it in part.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Maureen O'Connor, Chief Justice; Terrence O'Donnell, Justice; Maureen O'Connor, Justice; Eileen T. McClain?
JURISDICTION	Ohio
DECIDED	April 12, 2017
DOCKET	2015-0612
DISPOSITION	other
PROCEDURAL POSTURE	Original action in mandamus seeking disclosure of offense and incident reports under Ohio's Public Records Act.
STANDARD OF REVIEW	In-camera review to determine whether responsive records are public records or exempt security records under the Public Records Act.
PRECEDENTIAL VALUE	published opinion
PARTIES	Mark W. Miller, relator v. Clifford Pinkney, Cuyahoga County Sheriff, respondent, Judy Blatnik, respondent

TOPICS

[civil procedure](#)[remedies](#)[statutory interpretation](#)[administrative law](#)

PRACTICE AREAS

[public records](#)[mandamus](#)[administrative law](#)

QUESTIONS PRESENTED

1. Whether routine offense and incident reports responsive to Miller's request were public records subject to disclosure under Ohio's Public Records Act.
2. Whether the responsive records qualified as security records exempt from mandatory disclosure under R.C. 149.433.
3. Whether Miller was entitled to a writ of mandamus, costs, and reasonable attorney fees.

HOLDINGS

1. Routine offense and incident reports are public records normally subject to immediate release upon request.
2. The incident reports dated May 1, 2012; June 1, 2012; September 26, 2012; March 18, 2013; October 1, 2013; April 24, 2014; May 14, 2014; August 2, 2014; and August 27, 2014 were not security records and were subject to release with redaction of exempt information.
3. The writ of mandamus was granted in part and denied in part, and Miller was awarded costs and reasonable attorney fees subject to determination after review of his itemized application.

KEY QUOTATIONS

“Routine offense and incident reports are public records and are “normally subject to immediate release upon request.”” (¶ 3)

“A security record is “[a]ny record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage.”” (¶ 3)

“A security record is not a public record and “is not subject to mandatory release or disclosure” pursuant to the Public Records Act.” (¶ 3)

FACTUAL BACKGROUND

Mark W. Miller requested all offense or incident reports in the Cuyahoga County Sheriff's Office's possession, custody, or control that identified Edward FitzGerald as a reportee, complainant, or victim. The sheriff's public-records manager denied the request on the ground that the records were security records. After ordering production under seal, the Supreme Court of Ohio reviewed the responsive records in camera and identified nine incident reports that were not security records and were subject to release after redaction of exempt information.

PROCEDURAL HISTORY

Miller filed an original mandamus action against the Cuyahoga County Sheriff after the sheriff's public-records manager denied his request for offense and incident reports identifying Edward FitzGerald. The Supreme Court of Ohio ordered the respondents to submit responsive records under seal for in-camera review. The court granted the writ in part and denied it in part.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The responsive incident reports identified by the court were to be released with redaction of exempt information, and costs and reasonable attorney fees were to be determined upon review of Miller's itemized application.

CASES CITED

- State ex rel. Miller v. Bova, 147 Ohio St. 3d 1456, 2016-Ohio-8121, 64 N.E.3d 1001
- State ex rel. Beacon Journal Publishing Co. v. Maurer, 91 Ohio St. 3d 54, 56, 741 N.E.2d 511 (2001)
- State ex rel. Lanham v. Smith, 112 Ohio St. 3d 527, 2007-Ohio-609, 861 N.E.2d 530, ¶ 13

OPINION

PER CURIAM.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Miller v. Pinkney, Slip Opinion No. 2017-Ohio-1335.] NOTICE This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2017-OHIO-1335 THE STATE EX REL. MILLER v. PINKNEY, SHERIFF, ET AL. [Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Miller v. Pinkney, Slip Opinion No. 2017-Ohio-1335.] Mandamus—Public Records Act—R.C. 149.43—Routine incident reports are public records—Writ granted in part and denied in part.

(No. 2015-0612—Submitted February 7, 2017—Decided April 12, 2017.) IN MANDAMUS. _____ Per Curiam. {¶ 1} Relator, Mark W. Miller, filed this original action in mandamus against the Cuyahoga County sheriff. Frank Bova held that office at the time this litigation commenced, and therefore all prior rulings in this case were issued under the caption State ex rel.

Miller v. Bova. Clifford Pinkney currently serves as Cuyahoga County sheriff and has been automatically substituted as respondent in place of Bova. Civ.R. 25(D)(1). The mandamus action seeks to compel the SUPREME COURT OF OHIO production of the following records pursuant to R.C. 149.43, Ohio's Public Records Act: all offense or incident reports in the possession, custody or control of the Cuyahoga County Sheriff's Office in which Edward FitzGerald was identified in any of the following capacities: (i) reportee; (ii) complainant; or (iii) victim.

Respondent Judy Blatnik, the public records manager for the sheriff, denied the request, asserting the records were security records pursuant to R.C. 149.433(A)(3)(a)—recodified in 2016 as R.C.

149.433(A)(1), 2016 Sub.S.B. No. 321. {¶ 2} This court sua sponte ordered the respondents to submit under seal each offense and incident report in the possession of the sheriff's office that is responsive to relator Mark Miller's request so that the court may review the records in camera to determine which reports may be released and which reports satisfy the definition of a "security record" in R.C.

149.433. State ex rel. Miller v. Bova, 147 Ohio St. 3d 1456, 2016-Ohio-8121, 64 N.E.3d 1001. {¶ 3} Incident reports "initiate criminal investigations but are not part of the investigation." State ex rel. Beacon Journal Publishing Co. v. Maurer, 91 Ohio St.3d 54, 56, 741 N.E.2d 511 (2001). Routine offense and incident reports are public records and are "normally subject to immediate release upon request." State ex rel.

Lanham v. Smith, 112 Ohio St. 3d 527, 2007-Ohio-609, 861 N.E.2d 530, ¶ 13. In contrast, a security record is "[a]ny record that contains information 2 January Term, 2017 directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage." R.C. 149.433(A)(1). A security record is not a public record and "is not subject to mandatory release or disclosure" pursuant to the Public Records Act.

R.C. 149.433(B)(1). {¶ 4} Upon examination of the records delivered to this court pursuant to our order, we have determined that among the records are incident reports dated May 1, 2012; June 1, 2012; September 26, 2012; March 18, 2013; October 1, 2013; April 24, 2014; May 14, 2014; August 2, 2014; and August 27, 2014—all of which are attached to this opinion as an appendix—they are not security records and are subject to release with the redaction of exempt information.

We therefore grant the writ in part and deny it in part, and we award costs and reasonable attorney fees which will be determined upon review of Miller's filing of an itemized application. Writ granted in part and denied in part. O'CONNOR, C.J., and O'DONNELL, KENNEDY, FRENCH, O'NEILL, FISCHER, and DEWINE, JJ., concur. _____ The Law Firm of Curt C. Hartman and Curt C. Hartman; Koehler Fitzgerald, L.L.C., and Daniel P. Carter; and Finney Law Firm, L.L.C., and Christopher P. Finney, for relator.

Robert J. Triozzi, Cuyahoga County Law Director, and Robin M. Wilson, Assistant Law Director, for respondents. _____ 3 SUPREME COURT OF OHIO APPENDIX 4 January Term, 2017 5 SUPREME COURT OF OHIO 6 January Term, 2017 7 SUPREME COURT OF OHIO 8 January Term, 2017 9 SUPREME COURT OF OHIO 10 January Term, 2017 11 SUPREME COURT OF OHIO 12 January Term, 2017 13 SUPREME COURT OF OHIO 14 January Term, 2017 15 SUPREME COURT OF OHIO 16 January Term, 2017 17 SUPREME COURT OF OHIO 18 January Term, 2017 19 SUPREME COURT OF OHIO 20 January Term, 2017 21 SUPREME COURT OF OHIO 22