

SUPREME COURT OF OHIO

State ex rel. Ware v. O'Malley

2025-Ohio-5244 · No. 2024-0514 · Decided November 25, 2025

SUMMARY

The Supreme Court of Ohio denied Kimani E. Ware’s request for statutory damages arising from a public-records request to the Cuyahoga County Prosecuting Attorney. The court held that Ware failed to rebut the prosecutor’s affidavit stating that the requested list of cases did not exist and therefore had not shown a violation of R.C. 149.43(B).

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Kennedy, C.J.; Fischer, J.; DeWine, J.; Brunner, J.; Deters, J.; Hawkins, J.; Shanahan, J.
JURISDICTION	Supreme Court of Ohio
DECIDED	November 25, 2025
DOCKET	2024-0514
DISPOSITION	other
PROCEDURAL POSTURE	Original mandamus action concerning a public-records request. The court had previously granted a limited writ requiring production of certain records or certification that the requested case list did not exist, deferred the statutory-damages issue concerning the case list, and awarded court costs.
STANDARD OF REVIEW	Whether the relator established by clear and convincing evidence that responsive public records existed and were maintained by the public office, after the office attested that it had no responsive records.
PRECEDENTIAL VALUE	Published Ohio Supreme Court slip opinion; subject to formal revision before appearing in the Ohio Official Reports advance sheets.
PARTIES	Kimani E. Ware, relator v. Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, respondent

TOPICS

- civil procedure
- remedies

PRACTICE AREAS

Ohio public-records law

mandamus

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether Ware proved by clear and convincing evidence that the requested 1999 case list existed and was maintained by the prosecutor's office after the office attested that the record did not exist.
2. Whether Ware was entitled to statutory damages for the alleged failure to produce the requested case list.

HOLDINGS

1. When a public office attests that it does not have responsive records, the relator bears the burden of proving by clear and convincing evidence that the requested records exist and are maintained by the public office. Ware failed to meet that burden.
2. Because Ware failed to establish a violation of R.C. 149.43(B), he was not entitled to a statutory-damages award for the requested case list.

KEY QUOTATIONS

“When a public office attests that it does not have responsive records, the relator in a public-records mandamus case bears the burden of proving by clear and convincing evidence that the requested records exist and are maintained by the public office.” (¶ 3)

FACTUAL BACKGROUND

Ware requested public records from the Cuyahoga County Prosecuting Attorney, including a list of cases assigned to Assistant Prosecuting Attorney Lisa Reitz Williamson in 1999. The prosecutor's chief information officer attested that the office maintained case records only in paper form in 1999, transitioned to case-management software in 2008, and that the current system could not generate the requested list. Ware did not respond to the notice of compliance or submit evidence rebutting the affidavit.

PROCEDURAL HISTORY

Ware sought a writ ordering the Cuyahoga County Prosecuting Attorney to produce personnel files, payroll records, and a list of cases assigned to an assistant prosecutor in 1999, along with statutory damages and costs. The court previously granted a limited writ, requiring production of the personnel and payroll records and production of the case list if it existed, or certification that it did not exist; it denied damages concerning the first category, deferred damages concerning the case list, and awarded \$200 in court costs. The prosecutor complied by producing the personnel and payroll records and submitting an affidavit certifying that the case list did not exist. Ware filed no response, and the court denied his remaining statutory-damages request.

DISPOSITION

other

CASES CITED

- State ex rel. Ware v. O'Malley, 2025-Ohio-1855, ¶ 6, 37
- State ex rel. Culgan v. Jefferson Cty. Prosecutor, 2024-Ohio-4715, ¶ 13
- State ex rel. Pool v. Sheffield Lake, 2023-Ohio-1204, ¶ 23-24

OPINION

PER CURIAM.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Ware v. O'Malley, Slip Opinion No. 2025-Ohio-5244.] 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. 2025-OHIO-5244 THE STATE EX REL. WARE v. O'MALLEY, PROS. ATTY. [Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Ware v. O'Malley, Slip Opinion No. 2025-Ohio-5244.] Public-records requests—Relator has not shown that custodian of public records he requested failed to comply with an obligation to produce public records under R.C.

149.43(B)—Relator's request for statutory damages denied. (No. 2024-0514—Submitted August 6, 2025—Decided November 25, 2025.) IN MANDAMUS. _____ The per curiam opinion below was joined by KENNEDY, C.J., and FISCHER, DEWINE, BRUNNER, DETERS, HAWKINS, and SHANAHAN, JJ. Per Curiam. {¶ 1} In this original action, relator, Kimani E. Ware, sought a writ of mandamus ordering respondent, Cuyahoga County Prosecuting Attorney Michael SUPREME COURT OF OHIO C. O'Malley, to produce public records Ware had requested.

Ware also asked for awards of statutory damages and court costs. We previously granted a limited writ of mandamus ordering O'Malley to produce (1) personnel files and payroll records and (2) a list of cases assigned to Assistant Prosecuting Attorney Lisa Reitz Williamson in 1999, if such a list exists. 2025-Ohio-1855, ¶ 6, 37.

As to the latter, we stated that O'Malley could also comply with the limited writ by certifying that no such record exists. *Id.* at ¶ 37. We denied Ware's request for a damages award as to the personnel files and payroll records but deferred our consideration of the damages request as to the case list until O'Malley complied with the limited writ. *Id.* And we awarded Ware \$200 for his court costs.

Id. {¶ 2} O'Malley complied with the limited writ by (1) sending to Ware the personnel and payroll records we had ordered O'Malley to produce and (2) certifying that the requested case list does not exist. Ware did not file a response to O'Malley's notice of compliance with the limited writ. This case is now before us on our deferred determination of Ware's request for statutory damages as to the case list. {¶ 3} "When a public office attests that it does not have responsive records, the relator in a public-records mandamus case bears the burden of proving by clear and convincing evidence that the requested records exist and are maintained by the public office." State ex rel.

Culgan v. Jefferson Cty. Prosecutor, 2024-Ohio-4715, ¶ 13. In this case, O'Malley has submitted an affidavit sworn to by his office's chief information officer, Peter Szigeti, who attests that the requested case list does not exist. More specifically, Szigeti attests that the prosecutor's office was maintaining case records exclusively in paper format in 1999, that the office transitioned to a case-management-software system in 2008, and that the office's current case- management-software system cannot generate the requested list of 1999 cases. {¶ 4} Ware did not respond to the notice of compliance and therefore offers no proof to rebut Szigeti's affidavit.

Accordingly, Ware has not shown that O'Malley 2 January Term, 2025 failed to comply with an obligation to produce public records under R.C. 149.43(B). Having failed to show a violation of R.C. 149.43(B), Ware is not entitled to a statutory-damages award as to the case list. See State ex rel. Pool v. Sheffield Lake, 2023-Ohio-1204, ¶ 23-24. {¶ 5} For the foregoing reasons, we deny Ware's request for an award of statutory damages.

Request denied. _____ Kimani E. Ware, pro se. Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Matthew T. Fitzsimmons IV, Assistant Prosecuting Attorney, for respondent. _____ 3