

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

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