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Cleveland, Ohio 44113

**Court of Appeals**

**MOTION FOR...**  
**July 12, 2017 12:38**

By: JOHN T. MCLANDRICH 0021494

Confirmation Nbr. 1116532

STATE OF OHIO, EX. REL., BRIAN J. ESSI

CA 16 104659

vs.

CITY OF LAKEWOOD, OHIO

**Judge:**

**Pages Filed: 27**

IN THE COURT OF APPEALS  
EIGHTH APPELLATE DISTRICT  
CUYAHOGA COUNTY, OHIO

|                                       |   |                                          |
|---------------------------------------|---|------------------------------------------|
| STATE OF OHIO, ex rel, BRIAN J. ESSI, | ) | CASE NO.: CA-16-104659                   |
|                                       | ) |                                          |
| Relator,                              | ) |                                          |
|                                       | ) |                                          |
| vs.                                   | ) | <b><u>RESPONDENT CITY OF</u></b>         |
|                                       | ) | <b><u>LAKEWOOD'S RENEWED PARTIAL</u></b> |
| CITY OF LAKEWOOD,                     | ) | <b><u>MOTION FOR JUDGMENT ON THE</u></b> |
|                                       | ) | <b><u>PLEADINGS</u></b>                  |
| Respondent.                           | ) |                                          |

Now comes Respondent, City of Lakewood, by and through counsel, Mazanec, Raskin, & Ryder Co., LPA, and pursuant to Ohio Rule of Civil Procedure 12(C), respectfully requests that this Honorable Court issue an Order granting it judgment on the pleadings with respect to certain of Relator's public records requests identified within and dismissing all claims commanding a response to those requests against Respondent with prejudice.

Respectfully submitted,

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## **BRIEF IN SUPPORT**

### **I. INTRODUCTION**

Respondent is filing this renewed motion for partial judgment on the pleadings pursuant to this court's order of June 16, 2017 allowing for such a filing. Respondent has received Relator's "Certification" and appreciates the elimination of certain requests. However, the requests withdrawn are largely redundant layers of other requests. Further, a number of Relator's remaining requests are legally defective improper public record requests and as such Respondent should not be required to respond to the same or have to attempt to interpret a meaning to those requests.

Relator's certification violates the privileged nature of mediation and is also largely incompetent hearsay. Disclosure of statements purportedly made at mediation violates Ohio Revised Code § 2710.03 and § 2710.07. Notwithstanding, Relator's certification makes apparent that Relator is requesting the complete duplication of voluminous records. The "certification" also makes apparent that no "narrowing" of the requests occurred. There has been no agreement to accept a refined search or response and no modified requests have been submitted. Such complete duplications of voluminous records are not required under the public records act.

Further, Respondent is entitled to judgment as a matter of law on a number of Relator's requests because the requests are facially defective. These requests fail on any one or more of the following bases: (1) the requests are indefinite in time and, therefore, are overbroad; (2) the requests seek a complete duplication of voluminous files and, therefore, are overbroad; (3) Relator failed to identify with reasonably clarity the records being sought; and/or (4) the requests require Respondent to research for requested information.

Respondent is entitled to judgment as a matter of law, in part, for the reasons set forth herein.

## **II. LEGAL STANDARDS**

### **A. Motion for Judgment on the Pleadings.**

Ohio Rule of Civil Procedure 12(C) provides, in pertinent part: “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” A motion for judgment on the pleadings permits the court to consider the complaint and answer filed in the case. *State, ex rel. Midwest Pride, IV, Inc. v. Pontious*, 75 Ohio St. 3d 565, 569 (1996). The court must limit its determination of a motion for judgment on the pleadings solely to the allegations in the pleadings and any writings attached to those pleadings. *See Drozect v. Lanyers Title Ins. Corp.*, 140 Ohio App.3d 816, 820 (8th Dist. 2000).

Dismissal of the action under Civ.R. 12(C) is appropriate when a court “(1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the non-moving party as true, and (2) finds beyond doubt[] that the plaintiff could prove no set of facts in support of its claim that would entitle him to relief.” *Midwest Pride IV, Inc.*, 75 Ohio St. 3d at 570. A judgment on the pleadings may be granted where no material factual issue exists and the moving party is entitled to judgment as a matter of law. *Id.*

### **B. Writ of Mandamus.**

Mandamus is an extraordinary remedy “to be issued with great caution and discretion and only when the way is clear.” *State ex rel. Manley v. Walsh*, 142 Ohio St. 3d 384, 387 (2014) (quoting *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 166 (1977)). A writ of mandamus is appropriate only upon a showing: “(1) that [the relator] has a clear legal right to the relief requested; (2) that [the respondent] is under a clear legal duty to perform the requested act; and (3) that [the relator] has no plain and adequate remedy in the ordinary course of law.” *State ex rel. Ney v. Niehaus*, 33 Ohio St. 3d 118, 118–19 (1987). Relator must prove this by clear and

convincing evidence. *State ex rel. Zidonis v. Columbus State Cmty. Coll.*, 133 Ohio St. 3d 122, 126 (2012).

### **C. Public Records Requests.**

A public office may properly deny a requester's request for public records if the requester "makes an ambiguous or overly broad request or . . . [if the public office] cannot reasonably identify what public records are being requested . . . ." R.C. § 149.43(B)(2). As this Court has held:

"A general request, which asks for everything, is not only vague and meaningless, but essentially asks for nothing. At the very least, such a request is unenforceable because of its overbreadth. At the very best, such a request is not sufficiently understandable so that its merit can be properly considered."

*State ex rel. Strothers v. Murphy*, 132 Ohio App. 3d 645, 650 (8th Dist. 1999) (quoting *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 756 (10th Dist. 1989)).

## **III. LAW AND ARGUMENT**

### **A. Respondent is Entitled to Judgment as a Matter of Law on Certain of Relator's Requests Because the Requests are Indefinite in Time and Thus Overbroad.**

Respondent is entitled to judgment as a matter of law on certain of Relator's requests because the requests are indefinite in time and thus overbroad.

"The indefiniteness of . . . a request renders it incapable of being acted upon and certainly unsuitable for mandamus." *State ex rel. Zauderer v. Joseph*, 62 Ohio App. 3d 752, 756 (10th Dist. 1989). In *Zauderer*, the requester requested to inspect "all traffic reports." *Id.* The court denied the writ of mandamus, holding, in part, that the requests were overbroad because they span over an indefinite period of time. *Id.*

Similarly, in *State ex rel. Zidonis v. Columbus State Cmty. Coll.*, 133 Ohio St. 3d 122, 124 (2012), the requester requested to inspect a public university's complaint and litigation files. *Id.*

The request did not, however, include a specific time-frame. *Id.* at 125. The Supreme Court of

Ohio upheld the appellate court’s denial of the requester’s writ of mandamus. *Id.* at 122, 128, 130-31. The Supreme Court reasoned, in part, that the request was overbroad because it “sought whole categories of complaint and litigation files without any limitations as to content or time period . . . .” *Id.* at 127.

Likewise, in *Salemi v. Cleveland Metroparks*, 2014-Ohio-3914, ¶ 23 (8th Dist.), aff’d, 2016-Ohio-1192, ¶ 26, 145 Ohio St. 3d 408, the requester made the following requests:

- Copies of all checks spent to market the golf courses.* (Request 5)
- Copies of any contracts with private companies that relate to the marketing of the golf course.* (Request 7)
- Copies of any agreements with the Golf Channel or any other tee time reseller.* (Request 13)
- Copies of any minutes of meetings, notes, emails, or letters that relate to the marketing of the golf courses.* (Request 14)

(em dashes, parenthesis, and italics in original). This Court held that the requests were “overly broad and unreasonable in [] scope because the request[s] [were] not limited to a specific time period.” *Id.*, ¶ 26. This Court thus concluded that the “records requests must be limited to a specific period of time.” *Id.*, ¶ 37.

Here, similar to *Zauderer*, *Zidonis*, and *Salemi*, the below requests are indefinite in time. While certainly not the only such requests, Respondent moves for judgment on the pleadings on the following requests:

| PRR# | Request                                                                                                                                                                                                                                                                                |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 24   | All records, notes, and communications – electronic or otherwise – signed by Mayor Summers, Madigan, and/or Bullock regarding the LHA.                                                                                                                                                 |
| 30   | All correspondence and communications- electronic or otherwise- between or among Mayor Summers and Meehan.                                                                                                                                                                             |
| 130  | All correspondence and communications – electronic or otherwise – by any Lakewood City employee or official regarding bidding, listing, requests for proposal, and/or marketing concerning the Lakewood Hospital or any or all of the assets used in the conduct of Lakewood Hospital. |

|     |                                                                                                                                                                                                                                                                                                            |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 145 | All records, notes, and communications – electronic or otherwise – relating to any public, private or other selection process with respect to future lessees, future owners or future delivery of health services with respect to the Lakewood Hospital or the LHA.                                        |
| 159 | All records, notes, and communications – electronic or otherwise – regarding discussions, meetings or negotiations between any City of Lakewood employee or official with the LHA, its board members, the Cleveland Clinic, and/or its board members or trustees, related to the Lakewood Hospital or LHA. |
| 160 | All records, notes, and communications – electronic or otherwise – regarding discussions, meetings, or negotiations between any City of Lakewood council member with the LHA, its board members, the Cleveland Clinic, and/or its board members or trustees, related to the Lakewood Hospital or LHA.      |
| 171 | All records and communications – electronic or otherwise – between and among Law Director Butler and Jeff Huntsberger (“Huntsberger”).                                                                                                                                                                     |
| 172 | All records and communications – electronic or otherwise – between and among Thompson Hine and Huntsberger.                                                                                                                                                                                                |
| 173 | All records and communications – electronic or otherwise – between and among Law Director Butler and Meehan.                                                                                                                                                                                               |
| 207 | All correspondence and communications – electronic or otherwise – between Law Director Butler and any LHA official.                                                                                                                                                                                        |

Each request, on its face, encompasses an indefinite period of time. Because each request is unbound as to any temporal limits, each request is overbroad. “The indefiniteness of . . . [the] request[s] renders [them] incapable of being acted upon and certainly unsuitable for mandamus.” *State ex rel. Zauderer*, 62 Ohio App. 3d at 756. Relator, therefore, does not have a clear legal right to the records responsive to these requests. Nor does Respondent have a clear legal duty to provide Relator records responsive to such overbroad requests. *See State ex rel. Zidonis*, 133 Ohio St. 3d 122, 126, 128 (2012). Respondent is thus entitled to judgment as a matter of law with respect to each of these requests.

**B. Respondent is Entitled to Judgment as a Matter of Law On Certain of Relator's Requests Because the Requests Seek a Complete Duplication of Files and are Thus Overbroad.**

Respondent is entitled to judgment as a matter of law on certain of Relator's requests because the requests seek a complete duplication of Respondent's files and are thus overbroad.

The Public Records Act "does not contemplate that any individual has the right to a complete duplication of the voluminous files kept by government agencies." *State ex rel. Zauderer, v. Joseph*, 62 Ohio App. 3d 752, 756 (10th Dist. 1989). Ohio courts, including the Supreme Court of Ohio, routinely deny public records requests as overbroad because the requests in essence seek a complete duplication of the public office's files. *E.g., id.* (denying request for 'all traffic reports'); *State ex rel. Daugherty v. Mohr*, 2011-Ohio-6453, ¶ 32 (10th Dist.) (denying request for "'all DRC and LoCI policies, e-mails, or memos **regarding** whether prison officials are authorized to 'triple cell' inmates into segregation[']") (internal quotations in original); *State ex rel. Chasteen v. Ohio Dep't of Rehab. & Corr.*, 2014-Ohio-1848, ¶¶ 23-28 (10th Dist.) (denying request for "'a complete and full copy of each and all policies and documents associated with the 'Madison Correctional Institution Policy List (2012)'" (internal quotation and parenthesis in original); *State ex rel. Glasgow v. Jones*, 119 Ohio St. 3d 391, 394-95, 397 (2008) (denying requests for "'all emails . . . all text messages . . . [and] all written correspondence sent or received by'" a state representative in her official capacity, for approximately a six-and-a-half-month period)(internal quotations in original); *State ex rel. Zidonis v. Columbus State Cmty. Coll.*, 133 Ohio St. 3d 122, 124, 130-31 (2012) (denying a general request to inspect a public university's complaint and litigation files).

Relator made a number of requests that seek a complete duplication of a voluminous categories of records kept by Respondent.

**1. Request Number 24 is Overbroad Because the Request Seeks a Complete Duplication of Respondent's Files in Which Any One of Three Persons Merely "Signed" a document regarding the LHA.**

Respondent is entitled to judgment as a matter of law on Request Number 24 because the request seeks a complete duplication of Respondent's files and is therefore overbroad. Request Number 24 provides:

| PRR # | Request                                                                                                                                |
|-------|----------------------------------------------------------------------------------------------------------------------------------------|
| 24    | All records, notes, and communications – electronic or otherwise – signed by Mayor Summers, Madigan, and/or Bullock regarding the LHA. |

Request Number 24 requests “all records, notes, and communications – electronic or otherwise” “signed by” “Mayor Summer, Madigan, and/or Bullock” “**regarding**” LHA.”<sup>1</sup> The request does not specify a particular time period in which Relator seeks documents signed by any of the three listed individuals. Further, the request does not provide any clarity with respect to any particularized topic of documents that any one of the three individuals may have signed “regarding” the entity. Additionally, the request does not define the word “signed,” thereby begging the question of whether the request contemplates email records bearing an electronic signature of any one of the three individuals. As such, the request is overbroad because they require a complete duplication of Respondent's files in which any one of the three individuals either merely mentioned the specified entity.” Relator, therefore, does not have a clear legal right to the records responsive to this request. *See, e.g., State ex rel. Glasgow v. Jones*, 119 Ohio St. 3d 391, 394–95, 397 (2008); *State ex rel. Zidonis v. Columbus State Cmty. Coll.*, 133 Ohio St. 3d 122, 124, 130-31 (2012). Nor does Respondent have a clear legal duty to provide Relator records responsive to such an overbroad request. *E.g., R.C. § 149.43(B)(2)* (specifying that a public office

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<sup>1</sup> Because the requests request records signed by one of these three individuals, the requests is essentially three requests combined into one.

may deny an overly broad request). Respondent is thus entitled to judgment as matter of law on Request Number 24.

**2. The Following Requests are Overbroad Because the Requests Seek a Complete Duplication of Correspondence From and To Particular Individuals.**

| PRR # | Request                                                                                                                                                                       |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 30    | All correspondence and communications – electronic or otherwise – between or among Mayor Summers and Meehan.                                                                  |
| 32    | All correspondence and communications – electronic or otherwise between or among Mayor Summers and any employee of the Cleveland Clinic from January 1, 2015, to the present. |
| 121   | All correspondence and communications – electronic or otherwise – from and/or to Law Director Butler from January 1, 2015, to the present.                                    |
| 122   | All correspondence and communications – electronic or otherwise – from and/or to Mayor Summers from January 1, 2011, to the present.                                          |
| 123   | All correspondence and communications – electronic or otherwise – from and/or to Bullock from January 1, 2015, to the present.                                                |
| 171   | All records and communications – electronic or otherwise – between and among Law Director Butler and Jeff Huntsberger (“Huntsberger”).                                        |
| 172   | All records and communications – electronic or otherwise – between and among Thompson Hine and Huntsberger.                                                                   |
| 173   | All records and communications – electronic or otherwise – between and among Law Director Butler and Meehan.                                                                  |
| 207   | All correspondence and communications – electronic or otherwise – between Law Director Butler and any LHA official.                                                           |

Respondent is entitled to judgment as a matter of law on these requests because the requests seek a complete duplication of Respondent’s files and are therefore overbroad.

These requests seek “all correspondence and communications” “from and to” one specified individual or “between or among” certain specified individuals or one specified individual and all unspecified individuals from a particular entity. Some of the requests, are indefinite in time.

Certain other of the requests do specify a particular time-frame; however, the time-frame of the requests span at least two years (e.g., January 1, 2015) and are continuing in nature (i.e., provide no end-date). Further, none of the requests specify any particular topic.

*Glasgow* controls the disposition of these requests. In *State ex rel. Glasgow v. Jones*, 119 Ohio St. 3d 391, 394–95 (2006), the Supreme Court of Ohio found overbroad a general requests for “all emails . . . all text messages . . . [and] all written correspondence sent or received by” a state representative in her official capacity, for approximately a six-and-a-half-month period. (Internal quotations in original.) The Court concluded that the requester’s “general request impermissibly sought what approximated a ‘complete duplication’ of [the state representative’s] file.” *Id.* at 395 (internal quotation in original). The court thus denied the writ of mandamus. *Id.* at ¶ 397.

These requests seek records of all correspondence and communications—which includes emails and text messages—between one individual and another individual or all individuals from a particular entity—no matter the topic—for at least a two-year period—and in a number of the requests for an indefinite time-period. *Glasgow*, however, found an essentially identical request to be overbroad despite a more limited time-frame than the requests here – i.e., six-and-one-half months, versus at a minimum over a two-and-one-half-year period, to a maximum indefinite time-period. As such, these requests are overbroad because they impermissibly seek what amounts to be a complete duplication of records. Relator, therefore, does not have a clear legal right to the records responsive to these requests. *See, e.g., State ex rel. Glasgow*, 119 Ohio St. at 394–95, 397; *State ex rel. Zidonis v. Columbus State Cmty. Coll.*, 133 Ohio St. 3d 122, 124, 130-31 (2012). Nor does Respondent have a clear legal duty to provide Relator records responsive to such overbroad

requests. *E.g.*, R.C. § 149.43(B)(2) (specifying that a public office may deny an overly broad request). Respondent is thus entitled to judgment as matter of law on these requests.

**3. These Requests are Overbroad Because the Requests Seek a Complete Duplication of Respondent’s Files that Relate to Certain Other Documents, Entities, or Occurrences.**

| PRR # | Request                                                                                                                                                                                                                                                                                                                                                                                               |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 159   | All records, notes, and communications – electronic or otherwise – regarding discussions, meetings or negotiations between any City of Lakewood employee or official with the LHA, its board members, the Cleveland Clinic, and/or its board members or trustees, related to the Lakewood Hospital or LHA.                                                                                            |
| 160   | All records, notes, and communications – electronic or otherwise – regarding discussions, meetings, or negotiations between any City of Lakewood council member with the LHA, its board members, the Cleveland Clinic, and/or its board members or trustees, related to the Lakewood Hospital or LHA.                                                                                                 |
| 178   | All correspondence and communications – electronic or otherwise – between any Lakewood City employee or official and any employee or official of the Cuyahoga County government regarding the Lakewood Hospital or its assets during 2014, 2015 and 2016. This request includes any communication between any ex officio LHA official and any employee or official of the Cuyahoga County government. |

Respondent is entitled to judgment as matter of law on these requests because the requests require a complete duplication of records “relating to” certain other documents, entities, occurrences, and even potential occurrences.

In *Daugherty*, the requester requested “‘all DRC and LoCI policies, e-mails, or memos **regarding** whether prison officials are authorized to ‘triple cell’ inmates into segregation.’” (certain emphasis omitted) (internal quotations in original). *State ex rel. Daugherty v. Mohr*, 2011-Ohio-6453, ¶ 8 (10th Dist.). In *Chasteen*, the requester requested “‘a complete and full copy of each and all policies and documents **associated with** the ‘Madison Correctional Institution Policy List (2012)[.]’” *State ex rel. Chasteen v. Ohio Dep’t of Rehab. & Corr.*, 2014-Ohio-1848, ¶ 23 (10th Dist.) (emphasis added) (internal quotation and parenthesis in original). In both cases, the

Tenth District Court of Appeals denied the requests, holding that the requester did not “have the right to receive a complete duplications of files kept by [the] governmental agency[.]” *Id.*, ¶¶ 24, 27-28; *State ex rel. Daugherty*, 2011-Ohio-6453, ¶¶ 4, 32-33, 35-37.

Similarly, these requests seek “all records, notes, and communications” “**relating to**” a particular topic, document, occurrence, or even potential occurrence. The requests do not identify any particular record being sought; rather, the requests seek **all** records merely relating to something else. The phrase “relating to” is all-encompassing. Indeed, a document that “relates to” a topic, document, or occurrence sweeps up the entirety of a conceptual relationship to that particular topic, document, or occurrence. In fact, the dictionary defines the word “relating” as “to show or establish logical or causal connection between[.]” *Relating Definition*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/relating> (last visited March 24, 2017). These requests do not specify the records sought such that they can be identified. Rather, the requests require Respondent to make value judgments about what records concern a certain topic or concept or relate to a certain topic or concept. Such requests are too overbroad and vague to allow records to be identified and produced.

Each of these requests in this Section similarly requires such wide-ranging and far-reaching relation to the identified topic, document, or occurrence such that the requests require complete duplication of Respondent’s files with respect to that topic, document, and occurrence – and possibly well beyond, too. Therefore, these requests are overbroad. *See, e.g., State ex rel. Chasteen*, 2014-Ohio-1848, ¶¶ 24, 27-28; *State ex rel. Daugherty*, 2011-Ohio-6453, ¶¶ 4, 32-33, 35-37. Accordingly, Relator does not have a clear legal right to the records responsive to these requests. *See id.* Nor does Respondent have a clear legal duty to provide Relator records responsive to such overly broad requests. *E.g.*, R.C. § 149.43(B)(2) (specifying that a public office

may deny an overly broad request). Respondent is thus entitled to judgment as a matter of law on these requests because the requests seek a complete duplication of Respondent's records and are resultantly overbroad.

**C. Respondent is Entitled to Judgment as a Matter of Law on Certain of Relator's Requests Because Relator Did Not Identify with Reasonable Clarity the Records Being Sought and the Requests Require Respondent to do Research or Identify Records Containing Selected Information.**

Respondent is entitled to judgment as a matter of law on certain of Relator's requests because Relator not identify with reasonable clarity the records being sought and the requests require Respondent to do research or identify records containing selected information.

The Supreme Court of Ohio has continuously reaffirmed the general principle that, to constitute a proper public records request, "[i]t is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue." *State ex rel. Zidonis v. Columbus State Cmty. Coll.*, 133 Ohio St. 3d 122, 126 (2012) (quoting *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33 (2006), in turn quoting *State ex rel. Fant v. Tober*, 8th Dist. No. 63737, 1993 WL 173743, \*1 (Apr. 28, 1993), *affirmed*, 68 Ohio St.3d 117, 623 N.E.2d 1202 (1993)). And this Court has held that:

"A general request, which asks for everything, is not only vague and meaningless, but essentially asks for nothing. At the very least, such a request is unenforceable because of its overbreadth. At the very best, such a request is not sufficiently understandable so that its merit can be properly considered."

*State ex rel. Strothers v. Murphy*, 132 Ohio App. 3d 645, 650 (8th Dist. 1999) (quoting *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 756 (10th Dist. 1989).

The Supreme Court of Ohio has further found that "[t]he Public Records Act does not compel a public office 'to do research or to identify records containing selected information.'" *State ex rel. Shaughnessy v. Cleveland*, 2016-Ohio-8447, ¶ 10 (quoting *State ex rel. Fant*, 1993 WL 173743, \*1). In *Shaughnessy*, the requester requested, in part, "police reports within a two-

week period from the first and second districts for all non-domestic violence related aggravated assaults or assaults where the victims sought medical care at a hospital.” *Id.*, ¶ 9 (internal quotations omitted). The Supreme Court of Ohio held that the request was improper “because it required [the public office] to do research for [the requester] and to identify a specific subset of records containing selected information.” *Id.*, ¶ 10. The court concluded that the public office rightfully could have denied the request outright. *Id.*, ¶ 11.

Similarly, in *Fant*, the requester made the following requests:

- A. Please reply in writing to this complaint \* \* \*. In your reply, state the full name, employee number and the residential mailing address of the operator cited herein.
- B. Request the payroll number, name, and residential address of the operator including his date of employment with RTA, pursuant to R.C. 149.43(B).
- C. Request the operator payroll number, name, and residential mailing address including her date of employment with RTA, pursuant to R.C. 149.43(B).

*State ex rel. Fant v. Tober*, No. 63737, 1993 WL 173743, at \*1 (Ohio Ct. App. 8th Dist. Apr. 28, 1993), *aff’d*, 1993-Ohio-154, 68 Ohio St. 3d 117, 623 N.E.2d 1202. This Court held that the requester did not satisfy his responsibility in identifying with reasonable clarity the records being sought. *Id.* at \*1. This Court reasoned that the requester’s “attempts to request records d[id] not indicate what records [the requester] would like to examine as much as what *information* he would like to receive.” *Id.* at \*1 (emphasis in original). This Court thus concluded that the Public Records Act does not “compel a governmental unit to do research or to identify records containing selected information[,]. . . [or to] retrieve those records which would contain the information of interest to the requester.” *Id.* Accordingly, this Court granted the public office’s motion to dismiss. *Id.* at \*2.

Likewise, here, Relator made numerous requests that do not identify with reasonable clarity the records being sought and instead require Respondent to do research or to identify records containing selected information contained in the requests.

**1. These Requests Do Not Specify with Reasonable Clarity the Records Relator Seeks and Requires Respondent to do Research and Identify Particular Records Relating to or Regarding Unspecified Agreements, Discussions, Meetings or Negotiations Concerning or Relating to Certain Entities.**

Respondent is entitled to judgment as a matter of law on the requests in this Section because the requests do not identify with reasonable clarity the particular records being sought and require Respondent to research and identify records containing select information. The specific requests are:

| PRR # | Request                                                                                                                                                                                                                                                                                                    |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 130   | All correspondence and communications – electronic or otherwise – by any Lakewood City employee or official regarding bidding, listing, requests for proposal, and/or marketing concerning the Lakewood Hospital or any or all of the assets used in the conduct of Lakewood Hospital.                     |
| 145   | All records, notes, and communications – electronic or otherwise – relating to any public, private or other selection process with respect to future lessees, future owners or future delivery of health services with respect to the Lakewood Hospital or the LHA.                                        |
| 159   | All records, notes, and communications – electronic or otherwise – regarding discussions, meetings or negotiations between any City of Lakewood employee or official with the LHA, its board members, the Cleveland Clinic, and/or its board members or trustees, related to the Lakewood Hospital or LHA. |
| 160   | All records, notes, and communications – electronic or otherwise – regarding discussions, meetings, or negotiations between any City of Lakewood council member with the LHA, its board members, the Cleveland Clinic, and/or its board members or trustees, related to the Lakewood Hospital or LHA.      |

The requests in this Section request all “records, notes, and communications” that are “**related to**” or that “**regard**” “**any** agreements” or any “discussions, meetings **or** negotiations” “**concerning**” or “**related to**” either Lakewood Hospital or LHA. The requests do not specify

with reasonable clarity the records Relator seeks. This is not a request to produce clearly-identified records; rather, these requests ask Respondent to act as a researcher for Relator, make value judgments about what relates to or concerns a given topic, and select records based on those efforts. *Contra* R.C. § 149.43(B)(2) (specifying that a public office may deny a request for which it cannot reasonably identify what public records are being sought). First, the requests do not specify any particular agreement concerning or related to Lakewood Hospital or LHA for which Relator seeks records. Second, the requests do not specify any particular discussion concerning or related to Lakewood Hospital or LHA for which Relator seeks records. Third, the requests do not specify any particular meeting concerning or related to Lakewood Hospital or LHA for which Relator seeks records. Fourth, the requests do not specify any particular negotiation concerning or related to Lakewood Hospital or LHA for which Relator seeks records. Fifth, the requests do not even provide Respondent a temporal starting-point for searching for responsive records, as the requests are indefinite in time. Instead, the requests in this Section vaguely and improperly identify information that Relator would like to receive. As such, Relator has failed to satisfy his responsibility to identify with reasonable clarity the records he seeks in Request Numbers 159 and 160. *See, e.g., State ex rel. Shaughnessy v. Cleveland*, 2016-Ohio-8447, ¶ 10-11; *State ex rel. Fant v. Tober*, No. 63737, 1993 WL 173743, at \*1 (Ohio Ct. App. 8th Dist. Apr. 28, 1993). Therefore, Respondent does not have a clear legal duty to seek out and provide all records containing the information of interest to Relator. *E.g., id.*; Respondent is thus entitled to judgment as a matter of law on these requests.

**2. These Requests Does Not Specify with Reasonable Clarity the Records Relator Seeks and Requires Respondent to do Research and Identify Particular Records Relating to Another Document, Concept, Occurrence, or Entity.**

| PRR # | Request                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 134   | All records, notes, and communications – electronic or otherwise – relating to financial or performance results for the LHA from October 1, 2015, to the present. This request includes all records, notes, and communications – electronic or otherwise – in the files of Law Director Butler, Thompson Hine, its attorneys, and Robert Cahill who were all agents of the City of Lakewood.                |
| 159   | All records, notes, and communications – electronic or otherwise – regarding discussions, meetings or negotiations between any City of Lakewood employee or official with the LHA, its board members, the Cleveland Clinic, and/or its board members or trustees, related to the Lakewood Hospital or LHA.                                                                                                  |
| 160   | All records, notes, and communications – electronic or otherwise – regarding discussions, meetings, or negotiations between any City of Lakewood council member with the LHA, its board members, the Cleveland Clinic, and/or its board members or trustees, related to the Lakewood Hospital or LHA.                                                                                                       |
| 241   | All records, correspondence, emails and communications – electronic or otherwise – containing the names of the “new people involved” in the “communications strategy” and/or the “initiative” referred to in Butler’s email to City Council dated July 10, 2015 at 2:39 p.m.                                                                                                                                |
| 242   | All records, correspondence, emails and communications – electronic or otherwise – containing the “emerging ideas” referred to in Butler’s email to City Council dated July 10, 2015, at 2:39 PM.                                                                                                                                                                                                           |
| 243   | All records, correspondence, emails and communications – electronic or otherwise containing, or referring to, Dru Siley’s “progress of visioning the hospital site” referred to in Butler’s email to City Council dated July 10, 2015, at 2:39 PM.                                                                                                                                                          |
| 291   | All records, emails, notes, and communications – electronic or otherwise - including spreadsheets or calculations created or used by any city employee limited to the economic development functions or department of the City that estimate or establish the economic and/or financial value of the Letter of Intent or the Master Agreement and any economic development benefits from such transactions. |

Respondent is entitled to judgment as a matter of law on the requests in this Section because the requests request all information relating to another document, concept, occurrence, or entity and, therefore, do not identify with reasonable clarity the particular records being sought.

In *Daugherty*, the requester requested ““all DRC and LoCI policies, e-mails, or memos **regarding** whether prison officials are authorized to ‘triple cell’ inmates into segregation.”” (certain emphasis omitted) (internal quotations in original). *State ex rel. Daugherty v. Mohr*, 2011-Ohio-6453, ¶ 8 (10th Dist.). In *Chasteen*, the requester requested ““a complete and full copy of each and all policies and documents **associated with** the ‘Madison Correctional Institution Policy List (2012)[.]”” *State ex rel. Chasteen v. Ohio Dep’t of Rehab. & Corr.*, 2014-Ohio-1848, ¶ 23 (10th Dist) (emphasis added) (internal quotations in original). In both cases, the Tenth District Court of Appeals held that it was the requester’s responsibility to “identify with reasonable clarity the records at issue.” *Id.*, ¶ 24; *Daughtery*, 2011-Ohio-6453, ¶ 33. The court found in both cases that the requests were overbroad and, therefore, improper. *Id.*, ¶¶ 35-37; *Chasteen*, 2014-Ohio-1848, ¶ 27. As a result, the court denied the requesters’ writ of mandamus. *See id.*; *Daughtery*, 2011-Ohio-6453, ¶ 37.

In *Dillery*, the requester requested ““any and all records generated, in the possession of your department, containing any reference whatsoever to [the requester].”” *State ex rel. Dillery v. Icsman*, 92 Ohio St. 3d 312, 312 (2001) (internal quotations in original). The Supreme Court of Ohio concluded that the requester’s request was improper, holding in part that the requester “failed in her duty to identify the records she wanted with sufficient clarity.” *Id.* at 314-15.

The requests do not specify with reasonable clarity the records Relator seeks. The word “relating” is defined as “to show or establish logical or causal connection between[.]” *Relating Definition*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/relating> (last visited March 24, 2017). The word “concerning” is defined as “relating to[.]” *Concerning Definition*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/concerning> (last visited March 24, 2017). The word “regarding” is defined as “with respect to[.]” *Regarding Definition*,

Merriam-Webster, <https://www.merriam-webster.com/dictionary/regarding> (last visited March 24, 2017). The word “respect” is defined as “a relation or reference to a particular thing or situation[.]” *Respect Definition*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/respect> (last visited March 24, 2017). Based upon these definitions, and similar to the requests made in *Daughtery*, *Chasteen*, and *Dillery*, the requests here sweepingly requests the entirety of a conceptual relationship to a particular topic, document, occurrence, and potential occurrence identified in the request. Accordingly, because the particular verbiage of the requests renders the requests exceedingly wide-ranging and far-reaching, Relator has necessarily failed to satisfy his responsibility to identify with reasonable clarity the records he seeks in the requests in this Section. These requests also require research to identify records, rather than clearly identifying the records requested. Therefore, Respondent does not have a clear legal duty to seek out and provide all records containing the information of interest to Relator. *See, e.g., State ex rel. Shaughnessy v. Cleveland*, 2016-Ohio-8447, ¶ 10-11; *State ex rel. Fant v. Tober*, No. 63737, 1993 WL 173743, at \*1 (Ohio Ct. App. 8th Dist. Apr. 28, 1993). Respondent is thus entitled to judgment as a matter of law on the requests in this Section.

**3. These Requests Do Not Specify with Reasonable Clarity the Records Relator Seeks and Requires Respondent to do Research and Identify Particular Correspondence Between Unspecified Persons that Regard an Entity or its Assets.**

Respondent is entitled to judgment as a matter of law on the requests in this Section because the requests require Respondent to do research and identify particular correspondence between unspecified persons that regard an entity or its assets. The specific requests in this section are:

| PRR # | Request                                                                                                                                                                                                                                                                                           |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 178   | All correspondence and communications – electronic or otherwise – between any Lakewood City employee or official and any employee or official of the Cuyahoga County government regarding the Lakewood Hospital or its assets during 2014, 2015 and 2016. This request includes any communication |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     | between any ex officio LHA official and any employee or official of the Cuyahoga County government.                                                                                                                                                                                                                                                                                                                                |
| 179 | All correspondence and communications – electronic or otherwise – between any Lakewood City employee or official and any employee or official of the Cuyahoga County government with respect to any proposal regarding the Lakewood Hospital or its assets during 2014, 2015 and 2016. This request includes any communication between any ex officio LHA official and any employee or official of the Cuyahoga County government. |
| 180 | All correspondence and communications – electronic or otherwise – between any Lakewood City employee or official and any employee or official of the MetroHealth with respect to any proposal or discussion regarding the Lakewood Hospital or its assets during 2014, 2015 and 2016. This request includes any communication between any ex officio LHA official and any employee or official of the MetroHealth.                 |

The requests in this section request “all correspondence and communications” “between **any**” **unspecified** employee or official from Lakewood and “**any**” **unspecified** employee or official of a specified entity (e.g., Cuyahoga County, MetroHealth, etc.) either “**regarding** the Lakewood Hospital **or** its assets during 2014, 2015, and 2016[.]” or “with respect to **any** proposal **regarding**” the same. Relator, however, has not specified with reasonable clarity the documents he seeks in response to these requests. Indeed, a review of the requests demonstrates that Relator is requesting all communications between all employees and officials from Lakewood and all employees and officials from a particular entity **merely regarding** the Lakewood Hospital. A general request for “any and all records,” which Relator does here, is patently improper. *E.g.*, *State ex rel. Strothers v. Murphy*, 132 Ohio App. 3d 645, 650 (8th Dist. 1999); *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 756 (10th Dist. 1989).

Additionally, Relator does not specify the particular persons between whom he seeks correspondence and communications. Further, the requests do not identify any particular proposal regarding the Lakewood Hospital. Nor do the requests specify any particular asset of the Lakewood Hospital. Instead, Relator provides information that he seeks – rather than specifying

particular documents. Respondent, therefore, will have to sift through the entirety of its records to research and identify correspondence that are between: (A) either any one of Respondent's (1) employees, or (2) officials, and (B) either anyone one of another entities (1) employees, or (2) officials, and (C) that regard either (1) Lakewood Hospital, or (2) Lakewood Hospital's assets during either (i) 2014, (ii) 2015, or (iii) 2016. As such, Respondent does not have a clear legal duty to seek out and provide all records containing the information of interest to Relator. *See, e.g., State ex rel. Shaughnessy v. Cleveland*, 2016-Ohio-8447, ¶ 10-11; *State ex rel. Fant v. Tober*, No. 63737, 1993 WL 173743, at \*1 (Ohio Ct. App. 8th Dist. Apr. 28, 1993). Respondent is thus entitled to judgment as a matter of law on these requests.

**4. These Requests Do Not Specify with Reasonable Clarity the Records Relator Seeks and Requires Respondent to do Research and Identify Particular Correspondence Between Unspecified Persons Regarding Unspecified Proposals.**

Respondent is entitled to judgment as a matter of law on the requests in this Section because the requests require Respondent to do research and identify particular correspondence between unspecified persons regarding unspecified proposals. The specific requests in this section are:

| PRR # | Request                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 181   | All correspondence and communications – electronic or otherwise – between any Lakewood City employee or official and any employee or official of the Metro Health System with respect to any proposal or discussion during the period January 1, 2011 through the date of this request regarding the Metro Health System's desire to open and/or operate a family health center in Lakewood. This request includes any communication between any ex officio LHA official and any employee or official of the Metro Health System. |
| 182   | All correspondence and communications – electronic or otherwise – between any Cleveland Clinic employee or official and any Lakewood City employee or official with respect to any proposal submitted by the MetroHealth or any of its employees regarding the Lakewood Hospital or its assets during 2014, 2015 and 2016. This request includes any correspondence or communication between any ex officio LHA official and any employee or official of Cleveland Clinic.                                                        |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 183 | All correspondence and communications – electronic or otherwise – between any LHA official and any Lakewood City employee or official regarding any proposal submitted by the MetroHealth or any of its employees or officials with respect to the Lakewood Hospital or its assets during 2014, 2015 and 2016. This request includes any correspondence or communication between any ex officio LHA official and any employee or official of the Cleveland Clinic and LHA. |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The requests in this section request “all correspondence and communications” “between **any**” **unspecified** employee or official of a particular entity “and **any**” **unspecified** employee or official of Lakewood “**regarding any** proposal submitted by” a particular entity “**regarding** the Lakewood Hospital **or** its assets during 2014, 2015 and 2016.” The requests do not identify correspondence or communications of any particular persons. Nor do the requests identify any particular proposal regarding the Lakewood Hospital or its assets for which Relator seeks documents. Rather, Relator is requesting all communications between all employees and officials from Lakewood and all employees and officials from a particular entity regarding all unspecified proposals submitted by an entity regarding Lakewood Hospital **generally and** all of its unspecified assets. As such, Relator has failed to satisfy his responsibility to identify with reasonable clarity the records he seeks in the requests in this Section. Therefore, Respondent does not have a clear legal duty to seek out and provide all records containing the information of interest to Relator. *See, e.g.,* R.C. § 149.43(B)(2) (specifying that a public office may deny a request for which it cannot reasonably identify what public records are being sought); *State ex rel. Shaughnessy v. Cleveland*, 2016-Ohio-8447, ¶ 10-11; *State ex rel. Fant v. Tober*, No. 63737, 1993 WL 173743, at \*1 (Ohio Ct. App. 8th Dist. Apr. 28, 1993). Respondent is thus entitled to judgment as a matter of law on the requests in this Section.

#### IV. CONCLUSION

Relator has layered request upon request in an ever broadening effort to obtain every single document he believes exists on the topic of his concern. He explicitly acknowledges this. However, the law is quite clear that he is not entitled to a complete duplication of every record that exists.

Relator's requests are patently and incontrovertibly improper under the Act. Notwithstanding Respondent's explanations detailing the impropriety of Relator's requests, however, Relator has pursued this action. Relator brings this mandamus action contending that he has a **clear legal right** to documents responsive to each and every purported public records request at issue. However, as clearly set forth in this Motion, Relator's requests do not comply with the Public Records Act and do not entitle Relator to a writ of mandamus as to these requests. Respondent has produced records for many requests, even when they are legally improper and at great expense. Respondent will address the remaining disputed requests in its motion for summary judgment. Respondent has selected only some of the most clearly improper requests for this motion. Respondent moves this Honorable Court to an order relieving it of any obligation to respond to these defective requests and requests this Honorable Court deny Relator's writ for mandamus as to the requests covered by this motion.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

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**CERTIFICATE OF SERVICE**

A copy of the foregoing Respondent City of Lakewood's Renewed Partial Motion for Judgment on the Pleadings was filed electronically and served July 12, 2017 to all registered parties by operation of the Court's electronic filing system to:

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TRID-160233/Rspdnt Renewed Partial MJOP