COURT OF CLAIMS OF OHIO 2021 SEP 20 PM 3: 29

IN THE COURT OF CLAIMS OF OHIO

LOREN C. SENGSTOCK

Case No. 2021-00330PQ

Requester

Special Master Jeff Clark

V.

REPLY PLEADING

CITY OF TWINSBURG

Respondent

Now comes Requester, Loren C. Sengstock, as ordered by the special master for answers to the following:

1. Do you accept that all disputed matters were resolved in mediation except for the withholding of names of City employees under the age of eighteen?

Requester does accept that all disputed matters were resolved in mediation except for the withholding of names of City employees under the age of eighteen. Requester acknowledges the receipt from the Respondent of a computer system generated report of Individual Employee's healthcare deductions and a report of Personal Payroll deductions of employees.

2. Provide any desired response to respondent City's representations of facts and arguments of law.

Requester, Loren C. Sengstock, relied upon the following law and facts when a public records request was submitted to the Responder for a "Departmental Payroll Register as of 12/31/2020" on April 22, 2021 and received on May 20, 2021 from the City with a statement from the Finance Director that 'Redactions have been made for personal

information which I believe falls under "items that do not document the activities of the public office". It also has been redacted for underage employee names'. Requester on May 26, 2021 submitted a request to the Responder for the ORC section(s) that authorized or allowed the redaction of minor(s) names. Responder, by and thru Law Director, David M. Maistros stated on June 1, 2021 "The City determined that is was not in the best interest of the children to not release their names as part of a public records request made by you. Although the Sunshine Law does not specifically prohibit the release of children's names from a records request, the decision was made to hold the privacy of children to a higher standard as compared to the adult employees. Some of our part-time and seasonal employees are as young as 16 years old. We believe that it is prudent to protect their identity from potential harm that could come to them by publishing their names and positions with the City." Responder, by and thru Law Director, David M. Maistros further stated "If you disagree with the City's position in this regard you can certainly pursue redress through the courts."

Requester did then file a complaint, as a member of the public, on June 10, 2021 that was received on June 16, 2021 by the Ohio Court of Claims, as provided under Ohio Revised Code 2743.75 (D), stating in part that Requester was seeking redress through the court for a determination of whether the Responder had authority to redact minor public employees names or if the Ohio Revised Code authorized the redaction of any public employees names. Requester is not an attorney and begs the courts indulgence as to the form of this reply based solely upon his reading the Ohio Revised Code and the Ohio Sunshine Law manual provided by the Ohio Attorney General. The Requester is relying on the following in support of his complaint:

Ohio Revised Code, Section 149.434 Public offices to maintain employee database:

- (A) Each public office or person responsible for public records shall maintain a database or a list that includes the name and date of birth of all public officials and employees elected to or employed by that public office. The database or list is a public record and shall be made available upon request made pursuant to section 149.43 of the Revised Code.
- (B) As used in this section:
- (1) "Employee" has the same meaning as in section 9.40 of the Revised Code.
- (2) "Public Official" has the same meaning as in section 117.01 of the Revised Code.
- (3) "Public Record" has the same meaning as in section 149.43 of the Revised Code.

Ohio Revised Code, Section 9.40 Payroll deduction for United States savings bonds.

Any public employee of the state, or any political subdivision thereof, who desires to purchase United States savings bonds by the payroll deduction plan shall be granted such payroll deduction upon request to the head of the state or political subdivision department by whom he is employed.

As used in this section, "public employee' means any person holding an office, not elective, under the state, any county, municipal corporation, park district, conservancy district, sanitary district, health district, township, or public library, or employed and paid in whole or in part by the state or any of such named authorities in any capacity.

The Ohio Supreme Court recognized the distinction between private citizens personal information and 'public employees' in regards to Public Records laws in *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 725 N.E.2d 1144 (2000)

Moreover, the personal information requested is not contained in a personnel file. At issue here is information regarding children who use the City's swimming pools and recreational facilities. The subjects of appellee's public records request are not employees of the government entity having custody of the information. They are children-private citizens of a government, which has, as a matter of public policy,

determined that it is necessary to compile private information on these citizens.³ It seems to us that there is a clear distinction between public employees and their public employment personnel files and files on private citizens created by government.⁴ To that extent the personal information requested by appellee is clearly outside the scope of R.C. 149.43 and not subject to disclosure.

It seems clear to Requester that the legislature in R.C. 149.434 has made no distinction, exception, or exemption in law regarding the age of any 'public employees' but in fact said 'all public officials and employees elected to or employed by that public office'. The legislature further defined in R.C. 9.04 'public employee' as any elected or employee paid in whole or in part by the state or any such named authorities in any capacity.

Although the legislature has provided for multiple exemptions in the Ohio Revised Code, Section 149.43, for minor names and information regarding public records requests based upon 'privacy as a citizen' when the use of personal information was required for recreation programs. The Requester has found no exemption for 'public employees' whom are paid by the City as employees and no provision(s) were found in the Public Records law providing authority for any City or Law Director to redact any 'public employee' name regardless of age from any payroll report.

"The rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record or unreasonably interfere with the discharge of the duties of the officer having custody of the same." State ex rel. Patterson v. Ayers, 171 Ohio St. 369, 371, 171 N.E.2d5087(1960).

WHEREFORE, for the reasons set forth herein Requester, Loren C. Sengstock respectfully requests this Honorable Court order Respondent to resubmit the 'Departmental Payroll Register as of 12/31/2020' to Requester without redaction of any 'public employee' name(s).

Respectfully submitted,

/s/ Loren C. Sengstock

Loren C. Sengstock, Requester

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CERTIFICATE OF SERVICE

A copy of the foregoing has been sent by regular U. S. Mail on September 16, 2021 to:

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Attorney for Respondent

/s/ Loren C. Sengstock

Loren C. Sengstock, Requester