

Game Changer for Litigating Public Records Cases: Requesters Have New, Less Expensive Appeal Option

Starting in late September 2016, people requesting public records will be able to file quick complaints in court and use a mediator to try to resolve disputes with public offices.

Under current law, requesters in Ohio typically deal with the public office – e.g., a public school district – when it comes to record requests. If the office delays or refuses to answer, the requester can file a lawsuit via a mandamus action, but that is expensive and generally a long process.

Beginning September 28, 2016, requesters will be able to file a complaint with the Ohio Court of Claims. The change is a result of [Sub. S.B. 321](#). For a \$25 filing fee, the requester will be able to require the public office to work with the requester and a mediator to try to resolve any issues preventing release of the records. If the parties are not able to reach an agreement through mediation, then the question will be referred to a “Special Master” who will have seven days to decide whether the public office must turn over the records.

Requesters will still have the option of filing a *mandamus* action, but a requester may not use both the mediation process and traditional litigation. The purpose of the new law is to give requesters, who often do not have the resources for a drawn-out legal battle, a faster and less expensive way to fight for records. That said, if requesters want to file a mandamus case, they still have that option, which allows them to collect court costs if they win, plus attorneys’ fees if the court finds the public office acted in bad faith or waited until the requester filed suit to release the records.

While it is largely aimed at helping requesters, the bill also gives government offices an important recourse against overly litigious requesters, having them declared “vexatious.” A vexatious litigator in Ohio is someone who repeatedly brings baseless legal complaints for the purpose of harassing a defendant. Under the new law, a requester who repeatedly takes public offices to mediation over baseless or harassing public records complaints can be declared a vexatious litigator and prevented from bringing further complaints without prior permission from the courts.

The new process means public offices could save money on attorneys’ fees and other costs of litigation, but it could also mean that the process to resolve public records disputes becomes more contentious with many more complaints filed. Government offices should be prepared to engage in the mediation process and should make sure their public records officers are trained in the appropriate responses and reasons for denials of records.

If a public office has concerns about what should be released or how to approach mediation, the office should contact legal counsel for specific advice.

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