

IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO
CIVIL DIVISION

State Ex Rel.

GREGORY SMITH
238 Adams Street
Nelsonville, Ohio 45764

Relator,

vs.

CITY OF NELSONVILLE, OHIO
211 Lake Hope Dr.
Nelsonville, OH 45764

and

THOMAS CAMGEMI, CITY MANAGER
NELSONVILLE, OHIO
211 Lake Hope Dr.
Nelsonville, OH 45764

and

TAYLOR SAPPINGTON, AUDITOR CITY
OF NELSONVILLE, OHIO
211 Lake Hope Drive
Nelsonville Ohio 45764

and

NANCY SONIC, COUNCIL MEMBER, CITY
OF NELSONVILLE, OHIO
211 Lake Hope Dr.
Nelsonville, OH 45764

and

CORY TAYLOR, COUNCIL MEMBER
CITY OF NELSONVILLE, OHIO
211 Lake Hope Drive
Nelsonville, Ohio 45764

and

CASE NUMBER:

JUDGE:

PETITION FOR MANDAMUS

GREGG CLEMENT, COUNCIL MEMBER
CITY OF NELSONVILLE, OHIO
211 Lake Hope Drive
Nelsonville, Ohio 45764

and

JUSTIN BOOTH, COUNCIL MEMBER
CITY OF NELSONVILLE, OHIO
211 Lake Hope Drive
Nelsonville, Ohio 45764

And

ANTHONY DUNFEE, APPOINTED
COUNCIL MEMBER, CITY OF
NELSONVILLE, OHI
25 Pine Grove Drive
Nelsonville, Ohio 45764

Respondents.

PETITION

Relator comes now before this Court and respectfully requests this Court to issue a Writ of Mandamus to order the Respondents to provide lawful access to public records which Respondents control and have improperly refused to Relator in violation of and contrary to Revised Code §149.43. Relator verifies the facts and averment of facts by Relator's affidavit attached hereto.

PARTIES

1. Relator is a resident of the State of Ohio, City of Nelsonville, County of Athens.
2. Respondents were, or are at all times relevant herein, public officials or employees charged with management of the public records sought for purposes of Ohio Revised Code

§149.43 and this action. Respondents were at all times relevant herein responsible for protecting public records from loss, destruction, or tampering.

3. All records sought by the Relator are public records for purposes of Ohio Revised Code §149.011(G) and this action.

JURISDICTION AND VENUE

4. Because the Respondents and the records sought are located or were generated in the County of Athens, State of Ohio, this court has jurisdiction and venue by and thru Ohio Revised Code §149.43(C1).

FACTUAL ALLEGATIONS COUNT ONE

5. Respondent City of Nelsonville is a municipal corporation and political subdivision of the State of Ohio whose offices the law specifically enjoins as having a duty subject to Ohio Revised Code §149.43 and its records are subject to Ohio Revised Code §149.43.

6. Respondent Thomas Cangemi is the City Manager for the City of Nelsonville and a person whose office the law specifically enjoins as having a duty subject to Ohio Revised Code §149.43.

7. Respondent Taylor Sappington was at all times relevant herein the Auditor of Nelsonville Ohio, and a person whose office the law specifically enjoins as having a duty subject to Ohio Revised Code §149.43.

8. Respondents Nancy Sonic, Cory Taylor, Gregg Clement, Justin Booth, are currently council members of Nelsonville, Ohio and persons whose office the law specifically enjoins as having a duty subject to Ohio Revised Code §149.43.

9. Respondent Anthony Dunfee was an appointed Council member currently being challenged by Quo Warranto in the 4th District Court of appeals of Ohio (24CA0011) that

participated and voted during relevant Council Meetings of the City of Nelsonville and a person whose offices the law specifically enjoins as having a duty subject to Ohio Revised Code.

10. Ohio Revised Code Section §149.351 – Prohibits destruction or damage of records and mandates that all records are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the municipal records commissions provided for Ohio Revised Code Section §149.39.

11. Tampering with records is unlawful under Ohio Revised Code Section §2913.42.

12. Relator seeks records which are not under a valid exemption of Ohio Revised Code Section §149.43. Relator has a right of inspection and or copying of those records he seeks.

13. During the March 11, and March 25, 2024, regular meetings, Relator became aware of council members, during council meetings, texting, whispering, and other actions which prevented the public from being a part of an open meeting as required by Ohio Revised Code §121.22.

14. On March 26, 2024, Relator, made by email a public record request of records related to the requirement to hold public meetings. (Exhibit 1).

15. The March 26, 2024 record request gave a preservation notice to preserve all records for any future court dispute. (Exhibit 1)

16. On March 27, 2024, Relator expanded his record request. (Exhibit 2)

17. Relator, to avoid a lawsuit, sent an email March 28, 2024, to Nelsonville City Attorney Matthew Voltolini which included case law and sections from training manuals of training that all council members are required to obtain by Ohio Revised Code §109.43(B). (Exhibit 3 Two pages)

18. Mathew Voltolini responded to Relator by phone stating he was sending an email to all involved parties asking all parties to provide the requested records.

19. Respondent Thomas Cangemi, responded by email on March 30, 2024 acknowledging the request stating he had other requests that were submitted prior to the Relator's request which had to be completed before processing the Relator's request. (Exhibit 4)

20. Relator responded to the City Manager's email on March 30, 2024, stating that the law required a response in a reasonable amount of time and that the City Manager was welcome to call the Relator at any hour if he needed clarification. The Relator also restated that records in the possession of the City Auditor and Council Members had been requested. Those records were not held by the City Manager. (Exhibit 5)

21. On April 1, 2024 Relator emailed the City Auditor Taylor Sappington detailing the public records of relator's March 26, 2024 request that were held in office of the City Auditor and asking him to forward the record electronically. (Exhibit 6)

22. As of the date of the filing of this petition no Respondent has yet to provide any documents or otherwise lawfully explained an exemption to providing the requested documents to the Relator.

CLAIMS FOR RELIEF

Claim One: Writ Of Mandamus Directed To Respondent

23. The allegations set forth in paragraphs 1 thru 22 are incorporated herein by reference.

24. Pursuant to Ohio Revised Code §149.43(C)(1), Relator is entitled to a conclusive presumption of injury arising from the loss of use of the public records sought.

25. Pursuant to Ohio Rev. Code §149.43(C), Relator is entitled to a writ of mandamus from this court commanding Respondent to comply with Chapter §149.43 of the Ohio Revised Code and to otherwise restore Relator's right to inspect and or to copy the public records sought.

Claim Two: Monetary Damages

26. The allegations set forth in paragraphs 1 thru 25 are incorporated herein by reference.

27. Relator is entitled to money damages in the amount of one hundred dollars (\$100) for each day that Respondent improperly caused Relator to lose access to the public records. Ohio Rev. Code §149.43(C)(1), beginning on the day of filing of this action, up to a total of \$1000.

28. Relator is entitled to costs, expenses and reasonable attorney's fees of this action, and other such relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully prays that this Court:


1. Enter judgment that Respondents' continuing denial of the access to requested public records is unlawful and against the public interest and for which the issuance of a Writ of Mandamus by this Court to compel the production of such records to the Relator is lawful and warranted.

2. Issue a Writ of Mandamus to be served upon the Respondents personally, by copy, by the sheriff or by a person specially authorized by the court or judge issuing the writ, commanding Respondents to permit Relator's right to access the requested public records in the attached Exhibits and named in the petition for immediate inspection and/or copying.

3. Enter judgment in Relator's favor for statutory damages fixed at one hundred dollars for each business day during which the public office or person responsible for the

requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the Relator filed this mandamus action to recover statutory damages, up to a maximum of one thousand dollars. Enter judgment in Relator's favor for expenses, costs, and reasonable attorney's fees of this action, to be ascertained by the Court and other such relief as the Court deems just and proper.

4. Enter a Judgement of conclusive presumption of injury arising from the loss of use of the public records sought by the Relator.

Respectfully submitted,
 s/Daniel H. Klos
Daniel H. Klos (0031294
1911 Country Place
Lancaster, Ohio 43130
Voice (614 261-9581
Fax (614 262-5732
Email klosdhesq@aol.com
Attorney for Relator

AFFIDAVIT OF GREGORY SMITH

STATE OF OHIO :
 : SS.
COUNTY OF ATHENS :

1. I, Gregory Smith, being first duly sworn, depose and state the following as true based on my personal knowledge;
2. I am over 18 years of age and competent to give testimony in a court of law;
3. I am the Relator in the attached Petition for Mandamus as filed in this Court.
4. I have reviewed the foregoing Petition for Mandamus in its entirety;
5. I know and verify that all the averments recited therein for which I have personal knowledge are true to the best of my knowledge;
6. I believe and verify the remaining averments that I do not have personal knowledge of are true and are based on specific information, documents, or both, as attached hereto and recited therein.

Sworn to and subscribed in my presence this 28th day of May 202⁴7.

Michelle Ann Lockhart
Notary Public

Gregory Smith
Gregory Smith, Affiant



MICHELLE ANN LOCKHART
Notary Public, State of Ohio
My Commission Expires Dec. 27, 2026



Greg Smith <gas238@gmail.com>

Public record request

Greg Smith <gas238@gmail.com>

Tue, Mar 26, 2024 at 1:16 PM

To: Margarita Ngyuen <mnguyen@cityofnelsonville.com>, Taylor Sappington <auditor@cityofnelsonville.com>, Tom Cangemi <citymanager@cityofnelsonville.com>, Council Clerk <councilclerk@cityofnelsonville.com>, Nancy Sonick <Nsonick@cityofnelsonville.com>, Justin Booth <Jbooth@cityofnelsonville.com>, Cory Taylor <Ctaylor@cityofnelsonville.com>, Gregg Clement <Gclement@cityofnelsonville.com>, Jonathan Flowers <jflowers@cityofnelsonville.com>, Tony Dunfee <Tdunfee@cityofnelsonville.com>, Jonathan Robe <jonathan.robe@robelaoffice.com>
Cc: Rita Nguyen <ritanguyen4council@gmail.com>
Bcc: Daniel Klos <klosdhesq@aol.com>

Pursuant to Ohio Revised Code 149.43 I am requesting the following Public Records.

1. A copy of all text messages received or sent during March 25, 2024, by council members, city employees or city attorney.
2. A copy of all text messages between the city manager and city auditor for the months of January, February, and March of 2024
3. A copy of the phone bill of the city manager's city provided cell phone with the call and message logs for the Months of December 2023 thru March of 2024.
4. A copy of all emails between the manager and council members for the months of December 2023 thru March of 2024.
5. A copy of all emails between the city manager and the city auditor for the months of November 2023 thru March of 2024

Please provide all these records to this email address electronically.

Preservation Notice

The above records are public records which must be preserved by law even if held on privately owned cell phones. Destruction of public records has both criminal and civil penalties. All parties are hereby notified to preserve any of the above requested records for any future court dispute.

EXHIBIT 1



Greg Smith <gas238@gmail.com>

Public record request

Greg Smith <gas238@gmail.com>

Wed, Mar 27, 2024 at 8:50 AM

To: Margarita Ngyuen <mnguyen@cityofnelsonville.com>, Taylor Sappington <auditor@cityofnelsonville.com>, Tom Cangemi <citymanager@cityofnelsonville.com>, Council Clerk <councilclerk@cityofnelsonville.com>, Nancy Sonick <nsonick@cityofnelsonville.com>, Justin Booth <jbooth@cityofnelsonville.com>, Cory Taylor <ctaylor@cityofnelsonville.com>, Gregg Clement <gclement@cityofnelsonville.com>, Jonathan Flowers <jflowers@cityofnelsonville.com>, Tony Dunfee <tdunfee@cityofnelsonville.com>, Jonathan Robe <jonathan.robe@robelaoffice.com>

Cc: Rita Nguyen <ritanguyen4council@gmail.com>

. Additionally I am requesting all text messages, emails or records of any other records of electronic communications with council members, city employees by the city manager on March 25,2024.

[Quoted text hidden]

EXHIBIT2

2

5/1/24, 8:57 PM

Gmail - No response to request for public records

just let me know and I will proceed to file a mandamus.

The records I have requested are electronic records that can easily be delivered by a few mouse clicks to this email account. The city's public record request policy requires acknowledgement and production within three days of the request. Please explain any delay.

Thank You
Greg Smith

EXHIBIT 3 PAGE 2

3A



EXHIBIT 3 PAGE 1

Greg Smith <gas238@gmail.com>

No response to request for public records

Greg Smith <gas238@gmail.com>

Thu, Mar 28, 2024 at 10:27 PM

To: Margarita Ngyuen <mnguyen@cityofnelsonville.com>, Taylor Sappington <auditor@cityofnelsonville.com>, Tom Cangemi <citymanager@cityofnelsonville.com>, Council Clerk <councilclerk@cityofnelsonville.com>, Nancy Sonick <nsonick@cityofnelsonville.com>, Justin Booth <jbooth@cityofnelsonville.com>, Cory Taylor <ctaylor@cityofnelsonville.com>, Gregg Clement <gclement@cityofnelsonville.com>, Jonathan Flowers <jflowers@cityofnelsonville.com>, Tony Dunfee <tdunfee@cityofnelsonville.com>, Jonathan Robe <jonathan.robe@robelaoffice.com>, "Cc: Rita Nguyen" <ritanguyen4council@gmail.com>, Matt <Mathew@voltolinilaw.com>

Dear Mr. Voltolini:

From the Ohio Attorney Generals Sunshine Manual Page 3

b. Text messages

Like email messages, a text message may be a public record if the content or information in the message documents the activities of the public office. 40 The Ohio Court of Claims held that text messages on public employees' personal phones were public records because the content of the messages documented the activities of the office.

In Sinclair Media III, Inc, V Cincinnati
[Cite as Sinclair Media III, Inc. v. Cincinnati, 2019-Ohio-2623.]

The Ohio Court of claims ruled:

Sinclair's request for "all text messages from Cincinnati city council members, Mayor John Cranley and Harry Black in which Black's employment status is discussed" is a proper request.

ORC 121.22 (A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

I observed 4 members of the council engaging in Text messages during a council meeting. Some of the text messaging was extensive during the meeting. I have copied the March 25th YouTube of the council meeting.

I also observed Greg Clement go to Tony Dunfee and Cory Taylor and whisper. More discussion which was not open to the public.

In an effort to avoid a lawsuit, I am asking you to facilitate the production of the records which I have requested. If by any chance the City wants to deny my request,



Greg Smith <gas238@gmail.com>

Public Records Request

Tom Cangemi <citymanager@cityofnelsonville.com>
To: "gas238@gmail.com" <gas238@gmail.com>

Sat, Mar 30, 2024 at 1:34 AM

Greg Smith,

The City of Nelsonville's Public Records Request Policy states, in part, "It is the goal of The City of Nelsonville that all requests for public records should be acknowledged in writing or, if feasible, satisfied within three business days following the office's receipt of the request."

I've received your request, which was first sent on March 26, 2024 and then which you supplemented on March 27, 2024. After my office completes its initial review of the request, I may need to contact you for clarification as to the scope of your request.

There are some other prior requests that the City is still in process of responding to, so once those requests are completed, the City will be able to process your request.

Thomas Cangemi
City Manager
211 Lake Hope Drive
Nelsonville, Ohio 45764
(740) 753-1314
citymanager@cityofnelsonville.com

EXHIBIT 4

4



Greg Smith <gas238@gmail.com>

Public Records Request

Greg Smith <gas238@gmail.com>
To: Tom Cangemi <citymanager@cityofnelsonville.com>

Sat, Mar 30, 2024 at 3:04 AM

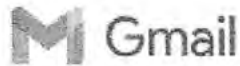
The meeting has constant text messages and I gave a preservation notice in my first email. The law requires you process requests in a reasonable time. It does not allow for a delay because of other requests. Most of the records I have requested are simple electronic transfers which do not require vast amounts of time to compile. If you need clarification you are welcome to call at any time. Even considering the time difference of your location. There are other requests directed to the city auditor, which are not records held by you and he will need to respond to those requests. There are other requests made to Council members which are not held by you, which will require their response. I look forward to your, the city auditor, and the council members' prompt response.

Thanks,
Greg Smith

[Quoted text hidden]

EXHIBIT 5





Greg Smith <gas238@gmail.com>

March 26, 2024 Public records request

Greg Smith <gas238@gmail.com>

Mon, Apr 1, 2024 at 1:31 PM

To: Taylor Sappington <auditor@cityofnelsonville.com>

Pursuit to ORC 149.43 you were copied in a public record request of which your office is in possession of a number of the records which were requested.

PLEASE note I have received no response from you in reference to this public record request.

I have copied in Red those records which are in your control and duty to provide.

If there is any delay in providing any particular record, please explain the delay while promptly providing all other records.

1. A copy of all text messages received or sent during March 25, 2024, by council members, city employees or city attorney.
2. A copy of all text messages between the city manager and city auditor for the months of January, February, and March of 2024
3. A copy of the phone bill of the city manager's city provided cell phone with the call and message logs for the Months of December 2023 thru March of 2024.
4. A copy of all emails between the manager and council members for the months of December 2023 thru March of 2024.
5. A copy of all emails between the city manager and the city auditor for the months of November 2023 thru March of 2024

Please provide all these records to this email address electronically.

Greg Smith

EXHIBIT 6