



Ohio Revised Code

Section 2743.75 Jurisdiction over claims alleging denial of access to public records.

Effective: September 29, 2017

Legislation: House Bill 49 - 132nd General Assembly

(A) In order to provide for an expeditious and economical procedure that attempts to resolve disputes alleging a denial of access to public records in violation of division (B) of section 149.43 of the Revised Code, except for a court that hears a mandamus action pursuant to that section, the court of claims shall be the sole and exclusive authority in this state that adjudicates or resolves complaints based on alleged violations of that section. The clerk of the court of claims shall designate one or more current employees or hire one or more individuals to serve as special masters to hear complaints brought under this section. All special masters shall have been engaged in the practice of law in this state for at least four years and be in good standing with the supreme court at the time of designation or hiring. The clerk may assign administrative and clerical work associated with complaints brought under this section to current employees or may hire such additional employees as may be necessary to perform such work.

(B) The clerk of the court of common pleas in each county shall act as the clerk of the court of claims for purposes of accepting those complaints filed with the clerk under division (D)(1) of this section, accepting filing fees for those complaints, and serving those complaints.

(C)(1) Subject to division (C)(2) of this section, a person allegedly aggrieved by a denial of access to public records in violation of division (B) of section 149.43 of the Revised Code may seek relief under that section or under this section, provided, however, that if the allegedly aggrieved person files a complaint under either section, that person may not seek relief that pertains to the same request for records in a complaint filed under the other section.

(2) If the allegedly aggrieved person files a complaint under this section and the court of claims determines that the complaint constitutes a case of first impression that involves an issue of substantial public interest, the court shall dismiss the complaint without prejudice and direct the allegedly aggrieved person to commence a mandamus action in the court of appeals with appropriate jurisdiction as provided in division (C)(1) of section 149.43 of the Revised Code.



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(D)(1) An allegedly aggrieved person who proceeds under this section shall file a complaint, on a form prescribed by the clerk of the court of claims, with the clerk of the court of claims or with the clerk of the court of common pleas of the county in which the public office from which the records are requested is located. The person shall attach to the complaint copies of the original records request and any written responses or other communications relating to the request from the public office or person responsible for public records and shall pay a filing fee of twenty-five dollars made payable to the clerk of the court with whom the complaint is filed. The clerk shall serve a copy of the complaint on the public office or person responsible for public records for the particular public office in accordance with Civil Rule 4.1 and, if the complaint is filed with the clerk of the court of common pleas, shall forward the complaint to the clerk of the court of claims, and to no other court, within three business days after service is complete.

(2) Upon receipt of a complaint filed under division (D)(1) of this section, the clerk of the court of claims shall assign a case number for the action and a special master to examine the complaint. Notwithstanding any provision to the contrary in this section, upon the recommendation of the special master, the court of claims on its own motion may dismiss the complaint at any time. The allegedly aggrieved person may voluntarily dismiss the complaint filed by that person under division (D)(1) of this section.

(E)(1) Upon service of a complaint under division (D)(1) of this section, except as otherwise provided in this division, the special master assigned by the clerk under division (D)(2) of this section immediately shall refer the case to mediation services that the court of claims makes available to persons. If, in the interest of justice considering the circumstances of the case or the parties, the special master determines that the case should not be referred to mediation, the special master shall notify the court that the case was not referred to mediation, and the case shall proceed in accordance with division (F) of this section. If the case is referred to mediation, any further proceedings under division (F) of this section shall be stayed until the conclusion of the mediation. Any mediation proceedings under this division may be conducted by teleconference, telephone, or other electronic means. If an agreement is reached during mediation, the court shall dismiss the complaint. If an agreement is not reached, the special master shall notify the court that the case was not resolved and that the mediation has been terminated.



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(2) Within ten business days after the termination of the mediation or the notification to the court that the case was not referred to mediation under division (E)(1) of this section, the public office or person responsible for public records shall file a response, and if applicable, a motion to dismiss the complaint, with the clerk of the court of claims and transmit copies of the pleadings to the allegedly aggrieved party. No further motions or pleadings shall be accepted by the clerk of the court of claims or by the special master assigned by the clerk under division (D)(2) of this section unless the special master directs in writing that a further motion or pleading be filed.

(3) All of the following apply prior to the submission of the special master's report and recommendation to the court of claims under division (F)(1) of this section:

(a) The special master shall not permit any discovery.

(b) The parties may attach supporting affidavits to their respective pleadings.

(c) The special master may require either or both of the parties to submit additional information or documentation supported by affidavits.

(F)(1) Not later than seven business days after receiving the response, or motion to dismiss the complaint, if applicable, of the public office or person responsible for public records, the special master shall submit to the court of claims a report and recommendation based on the ordinary application of statutory law and case law as they existed at the time of the filing of the complaint. For good cause shown, the special master may extend the seven-day period for the submission of the report and recommendation to the court of claims under this division by an additional seven business days.

(2) Upon submission of the special master's report and recommendation to the court of claims under division (F)(1) of this section, the clerk shall send copies of the report and recommendation to each party by certified mail, return receipt requested, not later than three business days after the report and recommendation is filed. Either party may object to the report and recommendation within seven business days after receiving the report and recommendation by filing a written objection with the clerk and sending a copy to the other party by certified mail, return receipt requested. Any objection to the report and recommendation shall be specific and state with particularity all grounds for the



objection. If neither party timely objects, the court of claims shall promptly issue a final order adopting the report and recommendation, unless it determines that there is an error of law or other defect evident on the face of the report and recommendation. If either party timely objects, the other party may file with the clerk a response within seven business days after receiving the objection and send a copy of the response to the objecting party by certified mail, return receipt requested. The court, within seven business days after the response to the objection is filed, shall issue a final order that adopts, modifies, or rejects the report and recommendation.

(3) If the court of claims determines that the public office or person responsible for the public records denied the aggrieved person access to the public records in violation of division (B) of section 149.43 of the Revised Code and if no appeal from the court's final order is taken under division (G) of this section, both of the following apply:

(a) The public office or the person responsible for the public records shall permit the aggrieved person to inspect or receive copies of the public records that the court requires to be disclosed in its order.

(b) The aggrieved person shall be entitled to recover from the public office or person responsible for the public records the amount of the filing fee of twenty-five dollars and any other costs associated with the action that are incurred by the aggrieved person, but shall not be entitled to recover attorney's fees, except that division (G)(2) of this section applies if an appeal is taken under division (G)(1) of this section.

(G)(1) Any appeal from a final order of the court of claims under this section or from an order of the court of claims dismissing the complaint as provided in division (D)(2) of this section shall be taken to the court of appeals of the appellate district where the principal place of business of the public office from which the public record is requested is located. However, no appeal may be taken from a final order of the court of claims that adopts the special master's report and recommendation unless a timely objection to that report and recommendation was filed under division (F)(2) of this section. If the court of claims materially modifies the special master's report and recommendation, either party may take an appeal to the court of appeals of the appellate district of the principal place of business where that public office is located but the appeal shall be limited to the issue in the report and recommendation that is materially modified by the court of claims. In order to facilitate the



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expeditious resolution of disputes over alleged denials of access to public records in violation of division (B) of section 149.43 of the Revised Code, the appeal shall be given such precedence over other pending matters as will ensure that the court will reach a decision promptly.

(2) If a court of appeals in any appeal taken under division (G)(1) of this section by the public office or person responsible for the public records determines that the public office or person denied the aggrieved person access to the public records in violation of division (B) of section 149.43 of the Revised Code and obviously filed the appeal with the intent to either delay compliance with the court of claims' order from which the appeal is taken for no reasonable cause or unduly harass the aggrieved person, the court of appeals may award reasonable attorney's fees to the aggrieved person in accordance with division (C) of section 149.43 of the Revised Code. No discovery may be conducted on the issue of the public office or person responsible for the public records filing the appeal with the alleged intent to either delay compliance with the court of claims' order for no reasonable cause or unduly harass the aggrieved person. This division shall not be construed as creating a presumption that the public office or the person responsible for the public records filed the appeal with the intent to either delay compliance with the court of claims' order for no reasonable cause or unduly harass the aggrieved person.

(H) The powers of the court of claims prescribed in section 2743.05 of the Revised Code apply to the proceedings in that court under this section.

(I)(1) All filing fees collected by a clerk of the court of common pleas under division (D)(1) of this section shall be paid to the county treasurer for deposit into the county general revenue fund. All such money collected during a month shall be transmitted on or before the twentieth day of the following month by the clerk of the court of common pleas to the county treasurer.

(2) All filing fees collected by the clerk of the court of claims under division (D)(1) of this section shall be deposited into the state treasury to the credit of the public records fund, which is hereby created. Money credited to the fund shall be used by the court of claims to assist in paying for its costs to implement this section. All investment earnings of the fund shall be credited to the fund. Not later than the first day of February of each year, the clerk of the court of claims shall prepare a report accessible to the public that details the fees collected during the preceding calendar year by the clerk of the court of claims and the clerks of the courts of common pleas under this section.



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(J) Nothing in this section shall be construed to limit the authority of the auditor of state under division (G) of section 109.43 of the Revised Code.