



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Appeals

AMENDED PETITION FOR WRIT FILED
July 25, 2025 13:07

By: ALEX M. CERTO 0102790

Confirmation Nbr. 3565999

THE BUCKEYE INSTITUTE

CA 25 115303

vs.

Judge:

CITY OF CLEVELAND

Pages Filed: 17

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

THE BUCKEYE INSTITUTE
88 E. Broad St., Ste. 1300
Columbus, Ohio 43215

Relator,

v.

CITY OF CLEVELAND
601 Lakeside Ave.
Cleveland, Ohio 44114,

and

TIFFANY WHITE-JOHNSON,
Commissioner of the City of Cleveland
Division of Purchases and Supplies
601 Lakeside Ave. #19
Cleveland, Ohio 44114,

Respondents.

CASE NO. CA-25-115303

**FIRST AMENDED
COMPLAINT IN MANDAMUS**

For its First Amended Complaint in Mandamus, Relator The Buckeye Institute (“Buckeye”) states as follows:

NATURE OF THE ACTION

1. This is a mandamus action seeking an order compelling the City of Cleveland and Tiffany White-Johnson to provide public records to Buckeye, as well as costs and reasonable attorneys’ fees expended in seeking that relief.

PARTIES AND JURISDICTION

2. Relator Buckeye is a non-profit corporation with its principal place of business in Franklin County, Ohio.

3. Respondent City of Cleveland (the “City”) is a political subdivision of the State of Ohio that operates in Cuyahoga County, Ohio.

4. Respondent Tiffany White-Johnson is a resident of Cuyahoga County and the commissioner of the Division of Purchases and Supplies for the City of Cleveland. The Division of Purchases and Supplies manages all purchases for the City of Cleveland.

5. This Court has personal jurisdiction over the parties because at all times relevant, the Respondents were located in Cuyahoga County, Ohio, all the actions or failure to act relevant to this Complaint occurred in Cuyahoga County, Ohio, and upon information and belief, the public records that Buckeye seeks to obtain through this action are being kept in Cuyahoga County, Ohio.

6. This Court has subject matter jurisdiction over this action under R.C. 149.43(C)(1)(b), which allows an aggrieved party to “commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney’s fees to the person that instituted the mandamus action” in “the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.”

FACTS

7. On April 30, 2025, Buckeye sought to obtain public records under R.C. 149.43 relating to the City’s disparity studies and related records aggregated for purposes of Cleveland Code § 187.28.

8. Specifically, Buckeye sent an e-mail to Respondent White-Johnson requesting copies of:

1. All records demonstrating a legally sufficient basis of past or present discrimination as to participation of MBEs or FBEs, which the City has used

in the four years preceding this records request or intends to use in connection with Cleveland Code § 187.28.

2. All records (including, but not limited to, Invitations to Bid, Requests for Proposals, submitted bids, and final contracts) in which an MBE or FBE Bid Discount or Evaluation Credit was requested or granted. This request is limited in time to such records dated after January 1, 2023.

See Exhibit A.

9. Neither Respondent White-Johnson nor any employee of the City responded to this initial request with responsive documents, a tentative timeframe, or even an acknowledgement of receipt.

10. Buckeye again sent an email to the City on May 27, 2025, requesting a status of the request and an estimated date of completion. See Exhibit A.

11. That same day, Respondent White-Johnson responded that it was in receipt of Buckeye's public record request but did not state whether the City would comply with the request and did not provide an estimated date of completion or any other information. See Exhibits A and B.

12. As of the date of this filing, the City has not provided the requested records or provided any response other than its May 27 email.

13. It has been over 60 days since Relator requested the subject documents.

14. This exceeds a reasonable period of time for a response under Ohio law.

COUNT ONE: VIOLATION OF OHIO'S PUBLIC RECORDS LAW

15. Relator restates the above allegations and incorporates them here as if fully rewritten.

16. Ohio's public records law requires, with certain exceptions, that public

offices provide citizens with access to or copies of public records:

Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt.

R.C. 149.43(B)(1).

17. The documents that Buckeye requested are public records as defined by R.C. 149.43(A)(1).

18. The records that Buckeye requested are not subject to any statutory exemption.

19. Buckeye's requests were made with sufficient specificity for Respondents to understand what records were requested.

20. Respondents intentionally violated R.C. 149.43 by failing to provide the requested records, either in whole or in part, and failed to indicate whether they had records that were being withheld under a claimed exemption.

21. Upon information and belief, Respondents have public records that are responsive to Buckeye's request that Respondents are intentionally withholding without

any valid claim of exemption.

22. Buckeye has a clear legal right under R.C. 149.43 to obtain the requested public records, and a writ of mandamus should issue from this Court to enforce that right under R.C. 149.43(C)(1)(b).

23. Buckeye has incurred costs and attorneys' fees in attempting to obtain the requested public records.

24. In addition, R.C. 149.43(C)(3) provides for statutory damages of \$100 per day from the day of the filing of this action, up to \$1,000.

WHEREFORE, Buckeye prays for relief as follows:

A. A writ of mandamus ordering the City of Cleveland and Respondent White-Johnson to comply with R.C. 149.43 and provide the requested records;

B. An award of all costs incurred, its reasonable attorneys' fees, and statutory damages under R.C. 149.43(C);

C. Any other relief that the Court deems just and equitable.

Respectfully submitted,

/s/ David C. Tryon
David C. Tryon (0028954)
Jay R. Carson (0068526)
Alex M. Certo (0102790)
J. Simon Peter Mizner (105077)
THE BUCKEYE INSTITUTE
88 East Broad Street, Suite 1300
Columbus, Ohio 43215
(614) 224-4422
Legal@buckeyeinstitute.org
J.Carson@buckeyeinstitute.org
A.Certo@buckeyeinstitute.org
Mizner@buckeyeinstitute.org

Attorneys for Relator

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that on Friday, July 18, 2025, Relator mailed a “complaint” form prescribed by the clerk of the court of claims to Respondents containing the facts outlined in this amended complaint in mandamus. *See Exhibit C.* On Monday, July 21, 2025, Relator’s “complaint” form was delivered to Respondents. *See id.* Three business days have expired since Respondents’ receipt of Relator’s “complaint” form. Respondents’ have not cured or otherwise addressed the failure alleged in the “complaint” form. Relator has filed this amended complaint in mandamus following the expiration of the time prescribed in R.C. 149.43(C)(1) and Respondents’ failure to cure or address the “complaint” form.

/s/ David C. Tryon
David C. Tryon
Attorney of record for
The Buckeye Institute

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above First Amended Complaint in Mandamus was served on all counsel of record via the Court's electronic filing system this 25th day of July 2025.

Respectfully submitted,

/s/ David C. Tryon
David C. Tryon
Attorney cf record for
The Buckeye Institute

Subject: RE: Public Records Request: City of Cleveland, Division of Purchases & Supplies
Date: Tuesday, May 27, 2025 at 2:59:08 PM Eastern Daylight Time
From: White Johnson, Tiffany
To: [REDACTED]

Good afternoon, Alex,

The City of Cleveland is in receipt of your public records request.

Thank you,

From: Public Records <[REDACTED]>
Sent: Tuesday, May 27, 2025 1:36 PM
To: White Johnson, Tiffany <[REDACTED]>; Purchasing <[REDACTED]>
Subject: Re: Public Records Request: City of Cleveland, Division of Purchases & Supplies

You don't often get email from [REDACTED] [Learn why this is important](#)
CAUTION: This email originated from outside of the City of Cleveland. Do not click on links or open attachments unless you recognize the sender and know that the content is safe. If you believe that this email is suspicious, please forward to [REDACTED].

Good afternoon,

I am following up on the below public records request (attached again), which was sent on April 30, 2025. The request asked that you notify us if you expected a response to take longer than 10 days. To date, we have not received a response to the request. Please confirm receipt of the request and advise when you expect to have a response.

Thank you,

Alex Certo

Alex M. Certo, *Legal Fellow*
The Buckeye Institute
88 East Broad Street, Suite 1300 | Columbus, Ohio 43215
Office: (614) 224-4422 | BuckeyeInstitute.org

From: Public Records [REDACTED]
Date: Wednesday, April 30, 2025 at 12:18 PM
To: [REDACTED] <[REDACTED]>,
[REDACTED]

Exhibit A-1 of 4

Subject: Public Records Request: City of Cleveland, Division of Purchases & Supplies

Good afternoon,

Attached, please find a public records request for the City of Cleveland Division of Purchases and Supplies. If you have any questions, please feel free to contact me.

Regards,

Alex Certo

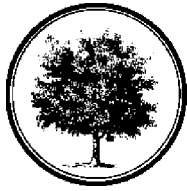
Alex M. Certo, *Legal Fellow*

The Buckeye Institute

88 East Broad Street, Suite 1300 | Columbus, Ohio 43215

Office: (614) 224-4422 | **BuckeyeInstitute.org**

Exhibit A-2 of 4



THE BUCKEYE INSTITUTE

April 30, 2025

VIA Electronic Mail

To: City of Cleveland, Division of Purchases and Supplies
Tiffany White-Johnson, Commissioner
[REDACTED]

Re: **Public Records Request**

Dear Mrs. White-Johnson:

Pursuant to Ohio Revised Code 149.43, The Buckeye Institute respectfully requests that you provide the public records outlined below.

The terms “MBE,” “FBE,” “Bid Discount,” and “Evaluation Credit” shall have the same definition as set forth in Cleveland Ordinance § 187.01.

Please provide copies of the following:

1. All records demonstrating a legally sufficient basis of past or present discrimination as to participation of MBEs or FBEs, which the City has used in the four years preceding this records request or intends to use in connection with Cleveland Code § 187.28.
2. All records (including, but not limited to, Invitations to Bid, Requests for Proposals, submitted bids, and final contracts) in which an MBE or FBE Bid Discount or Evaluation Credit was requested or granted. This request is limited in time to such records dated after January 1, 2023.

Please produce the records in electronic format to [REDACTED]. If you would prefer, a confidential Dropbox folder may be set up for you to upload the documents. Please advise if you would prefer to upload the documents to a Dropbox folder. If you need to send hard copies, please send them to the address set forth below, Attn: Alex Certo. If it is not possible to provide the records in electronic format and **if you anticipate that you will incur more than \$50 in copying or scanning expenses, please contact me before incurring these costs.**

If you anticipate a delay longer than **ten (10) days**, please notify me when you expect the materials to be ready. Failure to promptly produce the requested records may result in legal action, including a request for attorney’s fees and damages. *State ex rel. School Choice Ohio, Inc. v. Cincinnati Pub. School Dist.*, 2016-Ohio-5026, ¶ 46.

Exhibit A-3 of 4

If you have any questions or need additional information, please do not hesitate to contact me at (614) 224-4422. Thank you in advance for your cooperation.

Very truly yours,

David C. Tryon

David C. Tryon, *Director of Litigation*

The Buckeye Institute

88 East Broad Street, Suite 1300 | Columbus, Ohio 43215

Office: (614) 224-4422 | **BuckeyeInstitute.org**

Exhibit A-4 of 4

Subject: City - Public Records Request :: C001267-052725
Date: Tuesday, May 27, 2025 at 4:01:14 PM Eastern Daylight Time
From: Cleveland Public Records Center
To: [REDACTED]

Dear Alex M. Certo,

Thank you for your interest in public records of the City of Cleveland. Your request has been received and is being processed in accordance with the Ohio Sunshine laws. Your request was received in this office on 5/27/2025 and has been given the reference number C001267-052725 for tracking purposes.

Records Requested: Pursuant to Ohio Revised Code 149.43, The Buckeye Institute respectfully requests that you provide the public records outlined below. The terms “MBE,” “FBE,” “Bid Discount,” and “Evaluation Credit” shall have the same definition as set forth in Cleveland Ordinance § 187.01. Please provide copies of the following: 1. All records demonstrating a legally sufficient basis of past or present discrimination as to participation of MBEs or FBEs, which the City has used in the four years preceding this records request or intends to use in connection with Cleveland Code § 187.28. 2. All records (including, but not limited to, Invitations to Bid, Requests for Proposals, submitted bids, and final contracts) in which an MBE or FBE Bid Discount or Evaluation Credit was requested or granted. This request is limited in time to such records dated after January 1, 2023. Please produce the records in electronic format to

[REDACTED] If you would prefer, a confidential Dropbox folder may be set up for you to upload the documents. Please advise if you would prefer to upload the documents to a Dropbox folder. If you need to send hard copies, please send them to the address set forth below, Attn: Alex Certo. If it is not possible to provide the records in electronic format and if you anticipate that you will incur more than \$50 in copying or scanning expenses, please contact me before incurring these costs. If you anticipate a delay longer than ten (10) days, please notify me when you expect the materials to be ready. Failure to promptly produce the requested records may result in legal action, including a request for attorney’s fees and damages. State ex rel. School Choice Ohio, Inc. v. Cincinnati Pub. School Dist., 2016-Ohio-5026, ¶ 46. 2 88 East Broad Street, Suite 1300 • Columbus, Ohio 43215 • (614) 224-4422 • BuckeyeInstitute.org If you have any questions or need additional information, please do not hesitate to contact me at (614) 224-4422. Thank you in advance for your cooperation. Very truly yours, David C. Tryon David C. Tryon, Director of Litigation

Your request will be forwarded to the relevant City department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the availability and/or provided with copies of the records in question.

PLEASE NOTE: The public records law does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below and you'll receive an email when
Electronically Filed 07/25/2025 13:07 / FILING OTHER THAN MOTION / CA 25 115303 / Confirmation Nbr: 3565999 / CLPXP

your request has been completed. Again, thank you for using the Cleveland Public Records Center.

City of Cleveland - Public Records

To monitor the progress or update this request please log into the Cleveland Public Records Center.



CITY OF CLEVELAND
Mayor Justin M. Bibb



July 25, 2025

Dear Customer,

The following is the proof-of-delivery for tracking number: 882890227287

Delivery Information:			
Status:	Delivered	Delivered To:	Residence
Signed for by:	Signature not required	Delivery Location:	601 LAKESIDE AVE ERM 122
Service type:	FedEx Priority Overnight		
Special Handling:	Deliver Weekday; Residential Delivery		CLEVELAND, OH, 44114
		Delivery date:	Jul 21, 2025 09:35
Shipping Information:			
Tracking number:	882890227287	Ship Date:	Jul 18, 2025
		Weight:	1.0 LB/0.45 KG
Recipient:	Shipper:		
Tiffany White-Johnson, City of Cleveland	Alex Certo, Erin Sutter		
601 Lakeside Ave.	88 East Broad Street		
CLEVELAND, OH, US, 44114	Suite 1300		
	Columbus, OH, US, 43215		
Department Number	Division, Purchases & Supplies		

Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

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

THE BUCKEYE INSTITUTE
88 E. Broad St., Ste. 1300
Columbus, Ohio 43215

Relator,

v.

CITY OF CLEVELAND
601 Lakeside Ave. E.
Cleveland, Ohio 44114,

and

TIFFANY WHITE-JOHNSON,
Commissioner of the City of Cleveland
Division of Purchases and Supplies
601 Lakeside Ave. E. #19
Cleveland, Ohio 44114,

Respondents.

CASE NO. CA-25-115303

AFFIDAVIT OF ALEX CERTO

I, Alex Certo, having been duly sworn, do hereby affirm and state:

1. I am an adult resident of the State of Ohio and a legal fellow at The Buckeye Institute (“Buckeye”), a position I have held since August 2022. I am competent to make this Declaration and do so in support of Buckeye’s First Amended Complaint in Mandamus in the above-captioned matter.

2. On April 30, 2025, I sent an e-mail on behalf of Buckeye to Respondents Tiffany White-Johnson and the City of Cleveland (the “City”) requesting the public records referenced in Buckeye’s Complaint and attached thereto.

3. Specifically, my e-mail and attached public records request requested copies of:

1. All records demonstrating a legally sufficient basis of past or present discrimination as to participation of MBEs or FBEs, which the City has used in the four years preceding this records request or intends to use in connection with Cleveland Code § 187.28.

2. All records (including, but not limited to, Invitations to Bid, Requests for Proposals, submitted bids, and final contracts) in which an MBE or FBE Bid Discount or Evaluation Credit was requested or granted. This request is limited in time to such records dated after January 1, 2023.

4. Neither Respondent White-Johnson nor any employee of the City responded to my initial request with responsive documents, a tentative timeframe, or even an acknowledgement of receipt.

5. On May 27, 2025, I sent a second email, again on behalf of Buckeye, requesting a status of the request and an estimated date of completion.

6. That same day, Respondent White-Johnson responded that it was in receipt of Buckeye's public record request but did not state whether the City would comply with the request and did not provide an estimated date of completion or any other information.

7. As of the date of this filing, the City has not provided the requested records or provided any response other than its May 27 email.

8. Further, affiant sayeth naught.

Dated this 25th day of July, 2025,


Signature of Affiant

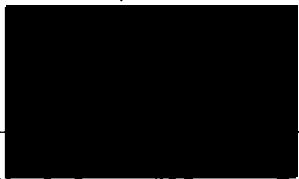
=====

The within named person (Affiant), Alexander Certo, who is a resident of Franklin County, State of Ohio, personally came and appeared before me, the undersigned Notary Public, and makes this his statement, testimony, and General Affidavit under oath or affirmation, in good faith, and under penalty of perjury, of sincere belief and personal knowledge that the above matters, facts, and things set forth are true and correct, to the best of his knowledge.

State of Ohio

County of Franklin

Subscribed and sworn to, or affirmed, before me on this 25th day of July, 2025.


Signature of Notary Public



COOPER WEIS
Notary Public, State of Ohio
Commission No. 2025-RE-887830
My Commission Expires
March 17, 2030

My Commission Expires: March 17, 2030