



Bill Mason
Cuyahoga County Prosecutor

March 5, 2010

Carrie L. Davis, Staff Counsel
American Civil Liberties Union of Ohio
4506 Chester Avenue
Cleveland, Ohio 44103-3621

Dear Ms. Davis:

I am the chief of the Civil Division of the County Prosecutor's Office and, as such, I represent both the Board of Commissioners of Cuyahoga County and County Administrator James McCafferty. I have been asked to respond to your letter dated February 17, 2010 which requests certain documents pursuant to Section 149.43 of the Ohio Revised Code.

Because your request was divided into five paragraphs or "bullet points," (the second of which contains five questions ostensibly directed to my clients), I will respond to the requests in that order.

As a preliminary matter, I note that a portion of the first paragraph of your request seeks records of the Transition Advisory Group ("TAG"). That request is entirely proper since the TAG was created by Section 12.06 of the County Charter, and Mr. McCafferty is a member of the TAG. Thus, as a general matter, to the extent that your request seeks the production of records of the TAG, we are happy to respond to those portions of your letter that seek public records of the TAG.

Your first "bullet point" record request seeks:

Records of whether any members of the Transition Advisory Group ("TAG"), its committees, subcommittees, or workgroups have completed the public records training that is mandatory for elected officials and their designees pursuant to Revised Code Section 109.43.

The implicit premise in this request is that county employees James McCafferty, Gary Holland, and Joseph Nanni (the three members of the TAG) are required to take "public records training that is mandatory for elected officials and their designees pursuant to Revised Code Section 109.43." However, the training requirements of R.C. 109.43 apply only to "elected officials or their appropriate designees." Since the members of the TAG are not elected officials

or their designees, then the aforementioned requirement is inapplicable to them. Thus, no such records of mandatory training can or do exist.

The first sentence of the second bullet point seeks records setting forth: “[t]he policies and procedures (official or unofficial) used in the formation of any committees, subcommittees, or workgroups established by or under the TAG.” To the extent that such a request seeks records of the Transition Advisory Group (“TAG”), the request is entirely proper since the TAG was created by Section 12.06 of the County Charter, and Mr. McCafferty is a member of the TAG. Thus, to the extent that your request seeks the production of records of the TAG, we are happy to respond to those portions of your letter that seeks public records of the TAG. However, we are not in possession of any records that set forth the TAG’s policies and procedures (official or unofficial) used in the formation of any committees, subcommittees, or workgroups established by or under the TAG. The first reason for this is that the TAG did not create or form such workgroups. The second reason is that neither McCafferty nor the BOCC is in possession of any records setting forth such policies.

Moreover, your request also appears to seek records of certain private groups who have been organized by individuals in the community to engage in a public discussion on County transition. These individuals have loosely organized themselves into groups to provide public participation in the process under a Transition Executive Committee. Your request suggests that the “committees, subcommittees and workgroups” that have been engaged in the public dialogue with the TAG are “public bodies” under R.C. 121.22(B)(1). It is my considered opinion that such voluntary, private groups are not public bodies, and thus the requirements of Ohio’s Public Records Law does not apply to them. In addition, although this office represents all county boards, commissions, officers and employees (including the TAG), it does not represent such private, unincorporated associations. Because the records of such groups are not public records, that is, because they do not document the activity of a *public body*, they are not the proper subject of a public records request. Thus, your request is not properly a request for public records under Ohio law.

What is more, certain portions of your letter (such as the list of questions grouped under the second “bullet point”) consist of questions or interrogatories directed to the recipient. Such questions are not properly public records requests under R.C.149.43, since they do not request records. Instead they pose questions. As such there is no public record that can be produced in response to them.

The third bullet point seeks: “A list of the names of each individual/volunteer who is serving or has served on a committee, subcommittee or workgroup under the TAG.”

While the lists of volunteers and other individuals who will be working on the various committees and workgroups created by the voluntary, private groups are not public records, since they do not serve to document the activity of a public body, we are happy to share with you the list that has been generated in the process thus far.

The fourth bullet point seeks: "Full copies of minutes to all TAG or subcommittee meetings that have already been held." While the TAG has held some informal discussions in the past, it has until now not kept minutes of its meetings. However, it now intends to adopt a policy of announcing the time and place of its meetings, and of keeping minutes of its weekly meetings.

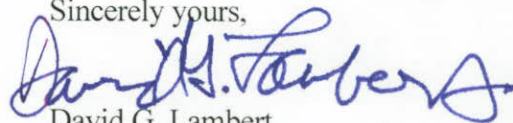
The fifth and final bullet point seeks: "Full copies of any documents or reports created by the TAG or any of its subcommittees." While the TAG has not generated any reports, we will produce the documents generated by the TAG to date. For your information, most of those documents have been published on the Cuyahoga County website. As for your request for any reports of subcommittees of the TAG, as I have previously stated, the TAG does not have any subcommittees. Accordingly, neither the BOCC nor Mr. McCafferty can respond to those portions of your request that do not seek records, nor to those portions of your letter that are not directed to the TAG, but are instead directed to those various voluntary associations formed by interested members of the public to provide community input to the TAG. Perhaps your request would be better directed to the Transition Executive Committee or to its counsel, Mr. Steven Kaufman of the law firm of Thompson Hine, LLP.

Finally, we have retrieved and copied approximately 7,000 pages of documents responsive to your request. Such documents will be available to be picked up on Monday, March 8, 2010. The cost for copying these documents is anticipated to be \$210.00. Please be prepared to remit that sum at the time of pick-up.

I trust this response is sufficient for your purposes. Please do not hesitate to call me if you have any further questions or would like to discuss the subject matter of this letter.

Thank you for your attention to this matter.

Sincerely yours,



David G. Lambert
Civil Division Chief