

FEB 28 1991

ORIGINAL ACTION IN
THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL.,
BARBARA HAAS MARGOLIUS
2646 Wicklow Rd
Shaker Heights, Ohio 44120

Relator,

vs.

THE CITY OF CLEVELAND, OHIO
A Municipal Corporation and
Body Politic
c/o Craig S. Miller, Law Dir.
601 Lakeside Ave.
Cleveland, Ohio 44114,

and

EDWARD KOVACIC,
Chief of Police,
Cleveland Police Headquarters
1300 Ontario St.
Cleveland, Ohio 44113

and

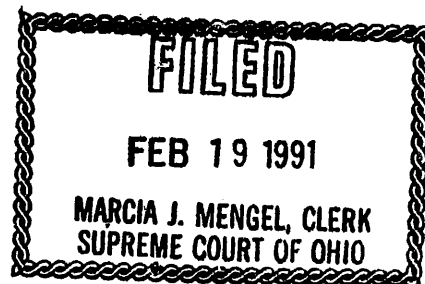
DONALD KASNER,
Manager,
City of Cleveland Data Center,
1404 E. 9th St.,
Cleveland, Ohio 44114

Respondents.

CASE NO.

91-367

PETITION FOR WRIT
OF MANDAMUS



1. Relator BARBARA HAAS MARGOLIUS is a private citizen who resides at 2646 Wicklow Rd., Shaker Heights, Ohio 44120 in the County of Cuyahoga. Relator is a doctoral student in Operations Research at Case Western Reserve University in the City of Cleveland.

2. Operations Research, also known as management science, can be described as the study of how to make the best use of limited resources. Operations Research techniques have been employed by private businesses and in the public sector. These techniques assist in determining, for instance, optimal bus routings, inventory levels, and personnel scheduling. Because of the vast amount of data to be processed and the complex mathematical formulae involved in Operations Research work, this work is generally preformed with the assistance of a computer.

3. Relator's specific area of research is how to optimally schedule and deploy a limited number of patrol officers given the need to respond to calls for service, accommodate patrol officer initiated activities (such as traffic stops), meet union contract obligations, and follow police deployment and dispatching protocols. Specifically, Relator is researching how well the City of Cleveland deploys and utilizes its police force.

4. Respondents are the CITY OF CLEVELAND, the Chief of Police for the City of Cleveland, EDWARD KOVACIC, and the Manager of the Data Center for the City of Cleveland, DONALD KASNER.

Respondents Kovacic and Kasner are named in their capacities as custodians of the requested records.

5. The records to which Relator Barbara Margolius seeks access are computer tapes which record the activity of the Cleveland Police from 1980 to the present (hereinafter referred to as the "tapes", "police activity tapes" or "requested records") and indexes to these tapes called record layouts.

6. The police activity tapes were created by Respondents and/or their employees and agents.

7. The police activity tapes are maintained by Respondents and/or their employees and agents, and are in their custody and control.

8. The police activity tapes record the activities of the Cleveland police.

9. The police activity tapes were created in the following manner. In approximately 1980, the Cleveland Police Department began to use operations research techniques in an effort to balance the workload performed by the City's patrol cars. This project, commonly referred to as the Lash Project, entailed the collection of data on the response of police officers on patrol to emergency calls. This data is stored on the police activity tapes. The tapes contain data for parts of 1980 and for numerous dates in

subsequent years up to the present.

10. Specifically, the police activity tapes record the time a call for assistance is received by the Cleveland police, the time a police car is dispatched and when it arrives, and the time the police car radios that it is free for a new assignment. The police activity tapes also record:

- i. the date on which the incident occurred;
- ii. the address at which the incident, including longitude and latitude;
- iii. the zone of occurrence;
- iv. the number of the responding police car, including codes indicating if the responding police car was a one or two officer car and whether one or two officers were required to deal with the incident;
- v. codes indicating the type of incident and how it was resolved; and
- vi. a census tract.

The Cleveland Police dispatch cars in response to over 250,000 calls for assistance each year.

11. Employees of the Cleveland Police enter the data listed in the above paragraph into computer. The data is then stored on computer tape, and it is these tapes which the Relator Barbara Margolius requests.

12. Upon information and belief there are two or three such police activity tapes.

13. Respondents have also created and maintain "record layouts" for the police activity tapes.

14. These record layouts are maintained in paper form, not on tape. The record layouts indicate where each piece of information is stored on the police activity tapes, and in what format.

15. All of the requested police activity tapes and layouts are maintained by the City either in its police headquarters or in its Data Center. All of these records have been requested by Relator Barbara Margolius and the City has repeatedly refused to produce them.

16. In October 1989 Relator Barbara Margolius requested access to the police activity tapes and layouts from then Police Chief Howard E. Rudolph in order to research how to improve the response time of the Cleveland Police. (A true and correct copy of her request, dated October 15, 1989, is attached hereto as Exhibit A).

17. In response, on October 31, 1989, then Police Chief Howard E. Rudolph wrote to Relator indicating that he did not believe that the police activity tapes were "public records", but offering to provide a print out of the tapes for "approximately \$2,400.00". (A true and correct copy of this response, dated October 31, 1989, is attached hereto as Exhibit B, at p.4).

18. On November 1, 1989 Relator wrote back to Chief Rudolph asking him to reconsider his refusal to provide a copy of the tapes. Relator explained that the production of a print out (then

estimated to be a six to eight feet pile of paper) rather than the tapes would make her research impossible as the proposed cost of a print out alone would be prohibitive. (A true and correct copy of this letter is attached hereto as Exhibit C, at p.1). Relator also pointed out that production of a print out would force her to re-enter all the data on the print out back on to computer, a costly task which the City had already performed at public expense. (Exhibit C at p.1).

19. Chief Rudolph did not respond to Relator's November 1989 letter, however Relator delayed filing suit under Ohio's Public Record Act in the hope that the new City administration would produce the requested records.

20. The issue of the response time of the Cleveland Police and the City's refusal to produce response time data had become a major issue in the 1990 Cleveland mayoral race.

21. During the race, relying on research done by the Relator, Candidate Michael White (now Mayor Michael White) repeatedly criticized the slow response time of the Cleveland police in press releases, public statements and in his political advertising. (See, e.g., Exhibit I attached hereto). Candidate White condemned the City for its refusal to comply with Relator's pending request for the police activity tapes stating that "the City has refused to comply with state law..." Exhibit I at I-3. Given Mayor White's apparent commitment to improving response time and his public

announcement that he viewed the tapes as public records, Relator waited for the new White administration to take office in the hope that it would release the requested tapes.

22. From July 1990 on Relator Barbara Margolius both orally and in writing again requested the police activity tapes and the layouts, this time from the new administration. Relator was again refused.

23. On or about August 1, 1990, Relator made formal written requests to Respondent Police Chief Edward Kovacic and Respondent Data Center Manager Donald Kasner, both employees of the Respondent City of Cleveland, in their capacities as custodians of the requested records, for copies of the tapes and layouts pursuant to Ohio Revised Code Section 149.43. (True and correct copies of the requests to Respondents Edward Kovacic and Donald Kasner are attached hereto as Exhibits D and E respectively).

24. On or about August 1, 1990, Relator Barbara Margolius received a letter from Craig Miller, Law Director of the City of Cleveland and counsel for Respondents in which Respondents refused to produce the requested tapes. (A true and correct copy of that letter, dated July 31, 1990, is attached hereto as Exhibit F).

25. The City has made no claim that the information on the requested tapes is exempt under any of the exceptions in Section 149.43(A) of the Ohio Revised Code. The City refused to produce

the requested tapes not because of their content, but because they were computer tapes.

26. On or about August 26, 1990, Relator wrote to Law Director Craig Miller asking the City to reconsider its refusal to provide copies of the police activity tapes and layouts. (A true and correct copy of this letter is attached hereto as Exhibit G).

27. In a letter dated September 27, 1990, counsel for the City continued to refuse to provide copies of the requested police activity tapes and layouts. (A true and correct copy of this letter is attached hereto as Exhibit H).

28. No print out of the police activity tapes exists.

29. If the City were to create a print out of the police activity tapes it would be a pile of paper approximately eight to ten foot tall.

30. In 1989 the cost the City proposed to charge to Relator for the creation of a print out of the police activity tapes was \$2,400.00. More information has since been added to the police activity tapes.

31. The large amount of data on the police activity tapes means that any analysis of the data must be done on computer.

32. Upon information and belief, to date it has taken the City approximately five to ten man years to enter all the data on to the tapes. Over the past decade the City has employed as few as one part-time clerk and as many as three full time clerks to enter the data on to computer.

33. The City currently pays its data operators \$7.80 an hour, including benefits. Therefore at present day costs, the cost the City has expended in entering the data on to the police activity tapes is at least \$162,000.00 (\$7.80 per hour multiplied by five man years). If the Relator has to perform this same task the Relator will incur prohibitive costs.

34. Upon information and belief, it would take one person less than sixty minutes to copy the police activity tapes onto other tapes. Blank copies of computer tapes cost from \$11.00 to \$18.00 each.

35. Relator has offered and remains willing to supply blank computer tapes to the City for free. Relator is willing to arrange for free copying of the tapes at a reputable institution.

36. The public, including Relator, enjoys a clear legal right to receive copies of the subject public records, the police activity tapes and layouts. Said clear legal right arises from Ohio Revised Code Section 149.43 and the common law of Ohio.

37. Respondents have continually refused to provide Relator with copies of the requested public records, on the sole basis that the data are contained on magnetic tape.

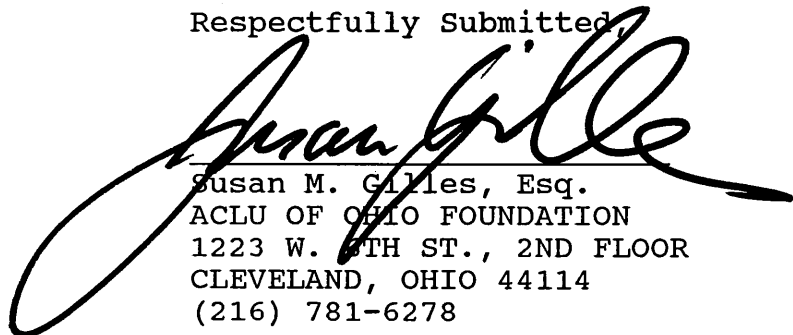
38. Relator has no plain and adequate remedy in the ordinary course of law.

39. This Court has jurisdiction over this action pursuant to Ohio Revised Code Sections 149.43 and 2731.02 and Article IV, Section 2 of the Constitution of Ohio.

WHEREFORE, Relator requests this Honorable Court to grant the following relief:

- (i) issue a peremptory writ of mandamus requiring Respondents to make arrangements for copying the police activity tapes on to new tapes, and providing the copy to Relator.
- (ii) to permit Respondents to charge Relator no more than the reasonable costs associated with copying the police activity tapes from one magnetic tape to another,
- (iii) to order the Respondents to pay to Relator her attorney fees for prosecuting this action, and to adjudge all costs of this action against Respondents, and
- (iv) grant any other relief this Court deems appropriate.

Respectfully Submitted,



Susan M. Gillies, Esq.
ACLU OF OHIO FOUNDATION
1223 W. 5TH ST., 2ND FLOOR
CLEVELAND, OHIO 44114
(216) 781-6278

Bar Admission No. 0030763

Counsel for Relator.