

**Gallagher Sharp Municipal Liability Newsflash:
Ohio Supreme Court Awards Attorney Fees for Late Production of Body
Camera Footage**

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On September 26, 2019, in *State ex rel. Cincinnati Enquirer v. Cincinnati*, __ Ohio St. __, 2019-Ohio-3876, the Ohio Supreme Court granted the Enquirer's request for attorney fees and court costs based on the late production of police body camera footage.

This case stems from the City of Cincinnati's denial of the Enquirer's request for public records, including the body camera videos related to an incident in which Cincinnati police officers used a Taser to subdue two men who were resisting arrest. The Enquirer filed an original action for a writ of mandamus in the Ohio Supreme Court. After the complaint was filed, the City provided the videos to the Enquirer. In the videos, the faces of plainclothes officers were obscured because the officers operated in a covert capacity and disclosing their faces could compromise their safety. The Enquirer challenged the City's decision to obscure the faces.

The Supreme Court determined that the redactions were proper due to risk of harm to the officers if their identities were disclosed. Further, the request for a writ of mandamus was denied as moot because the City had provided the requested videos after the writ was filed.

The Court further determined that the Enquirer was entitled to reasonable attorney fees and court costs. In 2016, Ohio's Public Records Act was amended and now authorizes the award of fees even when a writ is not granted, so long as the court makes any one of three factual determinations. One of those determinations is that "[t]he public office or person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not" the records should have been produced. R.C. 149.43(C)(3)(b)(iii). If the court makes a finding of bad faith, the statute instructs that court costs must also be awarded.

The Supreme Court determined that the City's own admission that the videos contained nothing of investigative value was evidence that it had acted in bad faith when it produced the videos only after the complaint was filed. Accordingly, the Supreme Court granted the Enquirer's request for attorney fees and court costs.

Public records requests for body camera videos are becoming more and more common and present logistical hurdles for municipalities because of the tight turnaround time and legitimate privacy concerns. This decision provides a good summary of Ohio law on body camera requests and shows that the Supreme Court will enforce penalties on late disclosures.

The opinion can be found at: <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2019/2019-Ohio-3876.pdf>.

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