



Ohio Department of Natural Resources

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May 28, 2021

Ms. Lea Harper
P.O. Box 473
Grand Rapids, OH 43522
(419) 450-7042
wewantcleanwater@gmail.com

Re: **Public Records Request #5121 follow-up**

Dear Ms. Harper,

On April 22, 2021, the Ohio Department of Natural Resources, Division of Oil and Gas Resources Management (“Division”) responded to the following request by providing you with all referral letters regarding the UIC program from 2011 to the present. Based on our interpretation of your request, we believed we had fully responded to your public records request.

Can you please provide all referrals to the Ohio Attorney General's office from the ODNR regarding cases involving operators of the UIC program in Ohio? The USEPA cited cases of referrals by the ODNR in 2016. Please provide all referrals for investigation by the Ohio AG of the Class II injection well program in Ohio from 2011 until the present, including original documentation of possible violations and any responses received in return from the AG's office.

On April 22, 2021, you emailed the following to Adam Schroeder:

I should have looked at my unread messages first. Thanks, Adam. I have attached a letter we received from the USEPA that referred to three referrals involving 10 wells to the AG's office in the attached letter from 2016. I am assuming the letter dated 1/29/21 that has the name blacked out is because that case is still under investigation(?). Are there more records you can provide that would provide the records that the USEPA is referring to in the attached letter? Thanks!

Unfortunately, requests for “information” are not proper public records requests. *Wilhelm v. Jerusalem Twp. Zoning*, 2020-Ohio-5283, ¶¶9-11 (Ohio Ct. Cl. Oct. 1, 2020), adopted by *Wilhelm v. Jerusalem Twp. Zoning*, 2020-Ohio-5282, 2020 Ohio Misc. LEXIS (Ohio Ct. Cl., Oct. 20, 2020) (a public office has no duty to respond to a question or request for information and a court cannot compel a public office to do so). Accordingly, your request must be denied pursuant to R.C. 149.43.

Nonetheless, as a courtesy, both the Division and the Office of the Ohio Attorney General conducted a comprehensive search for the three referrals referenced in the 2016 letter from EPA and were

unable to locate such files. I also contacted Stephen Jann, author of the letter to which you refer, enclosed a copy of the 2016 letter, and asked him for information concerning the three referrals involving 10 wells to the AG's office. EPA also conducted a comprehensive search for the three subject referrals. I received a response this week from U.S. EPA Region 5 stating they were “unable to find the source of information about referrals to your office.” Consequently, any request for these records from ODNR is denied. As was more fully discussed in my letter dated April 22, 2021, I will also confirm the name was redacted from the January 29, 2021 letter because the matter is still under investigation.

On April 23, 2021, you emailed the following to Adam Schroeder:

I thought the records I would receive would be all the inspection reports, etc. that justified turning these cases over to the AG's office. Can we get the additional backup records for these complaints? And can you please advise what the OEPA¹ was referring to as far as justifying how the ODNR regularly refers cases to the AG?

Pursuant to Ohio Revised Code (“R.C.”) 149.43(B)(2), your request is denied as overly broad and ambiguous. In order to be proper, a request must fairly and specifically describe what records the requester is seeking. *State ex rel. Carr v. London Corr. Inst.*, 144 Ohio St.3d 211, 2015-Ohio-2363, ¶¶ 21-31. “[I]t is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue.” *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶29 quoting *State ex rel. Fant v. Tober*, 68 Ohio St.3d 1176, 1993-Ohio-154, 623 N.E.2d 1202 (1993). A governmental office has no duty to “seek out and retrieve those records which would contain the information of interest to the requestor.” *State ex rel. Fant v. Tober*, No. 63737, 1993 Ohio App. LEXIS 2591 at *3-4 (8th Dist. Apr. 28, 1993); *aff'd* 68 Ohio St.3d 117 (1993). To the extent your request does not seek specific records and would require the Division to search for information within its records containing selective information, your request is being denied as ambiguous and overly broad pursuant to R.C. 149.43(B)(2).

Turning to your specific request, the Division does not maintain and access its referral records in the ordinary course of its duties by program area. Rather, they are sorted by owner/operator name. Notwithstanding the above, the Division would like to assist you in your inquiry. As a courtesy, records are being provided with this letter that *may* be responsive to your denied request.

Enclosed please find copies of additional records related to the referral letters for enforcement to the Ohio Attorney General which were previously provided to you. Generally, these records include such items as inspection reports, compliance notices, photos, and non-privileged communications. You will find that personal information such as social security, tax identification, and financial account numbers have been redacted from various records pursuant to RC 149.47(A)(1)(dd). Such information is not to be released, consistent with *State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 70 Ohio St.3d 605, 1994-Ohio-6 and Department policy. As more fully set forth below, additional records were redacted or withheld based on the

¹ I believe you meant to refer to EPA rather than OEPA since Ohio EPA has no jurisdiction over Ohio's Class II injection well program. As previously set forth, ODNR has no records responsive to this request.

“Confidential law enforcement investigatory records” exemptions. See Ohio Revised Code (“RC”) §149.43(A)(1)(h).

Investigatory case files are being withheld under R.C. 149.43(A)(2)(a) and (c) so as not to disclose the identity of an uncharged suspect and specific investigatory work product in an ongoing confidential law enforcement investigation. *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, ¶ 23; *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 431-432 (1994). Documents have also been withheld pursuant to R.C. 149.43(A)(1)(g) and (A)(4), being trial preparation records containing information that is specifically compiled in reasonable anticipation of, or in defense of a civil or criminal action or proceeding. Privileged information pursuant to Ohio Revised Code Section 149.43(1)(v) and *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶¶ 26-31 has also been withheld, being information protected by attorney-client privilege.

If you wish to revise your request, you may benefit from reviewing the Department’s records retention schedules, which can be accessed and searched electronically at <https://apps.das.ohio.gov/RIMS/GeneralSchedule>. This link will take you to the DAS General Schedule list. Department Specific Schedules may be located using the Agency Schedule Search tab at the top of the page and selecting DNR from the drop-down menu. In addition, Department General Schedules may be located using the Agency-Adopted General Schedule Search tab located at the top of the page and selecting DNR from the drop-down menu. To narrow down to Division Specific Schedules, you may use the Agency/Division/Section tab located at the top of the page to select DNR and the Division from the drop-down menus.

Your patience in receiving these responses is most appreciated as ODNR continues to work remotely. This correspondence and records production concludes the Division’s response to Public Records Request No. 5121. We hope this information is of assistance to you and thank you for the opportunity to be of service.

Sincerely,

s/Sandra H. Ramos

Sandra H. Ramos
Legal Counsel, ODNR - Division of Mineral Resources Management