

As Introduced

**134th General Assembly
Regular Session
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H. B. No. 658

Representative Ingram

A BILL

To amend section 2743.75 of the Revised Code to
require the award of attorney's fees to an
aggrieved person if a court of appeals
determines in an appeal by a public office from
a Court of Claims order that the public office
denied the person access to public records in
violation of the Public Records Law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2743.75 of the Revised Code be
amended to read as follows:

Sec. 2743.75. (A) In order to provide for an expeditious
and economical procedure that attempts to resolve disputes
alleging a denial of access to public records in violation of
division (B) of section 149.43 of the Revised Code, except for a
court that hears a mandamus action pursuant to that section, the
court of claims shall be the sole and exclusive authority in
this state that adjudicates or resolves complaints based on
alleged violations of that section. The clerk of the court of
claims shall designate one or more current employees or hire one
or more individuals to serve as special masters to hear

complaints brought under this section. All special masters shall 20
have been engaged in the practice of law in this state for at 21
least four years and be in good standing with the supreme court 22
at the time of designation or hiring. The clerk may assign 23
administrative and clerical work associated with complaints 24
brought under this section to current employees or may hire such 25
additional employees as may be necessary to perform such work. 26

(B) The clerk of the court of common pleas in each county 27
shall act as the clerk of the court of claims for purposes of 28
accepting those complaints filed with the clerk under division 29
(D) (1) of this section, accepting filing fees for those 30
complaints, and serving those complaints. 31

(C) (1) Subject to division (C) (2) of this section, a 32
person allegedly aggrieved by a denial of access to public 33
records in violation of division (B) of section 149.43 of the 34
Revised Code may seek relief under that section or under this 35
section, provided, however, that if the allegedly aggrieved 36
person files a complaint under either section, that person may 37
not seek relief that pertains to the same request for records in 38
a complaint filed under the other section. 39

(2) If the allegedly aggrieved person files a complaint 40
under this section and the court of claims determines that the 41
complaint constitutes a case of first impression that involves 42
an issue of substantial public interest, the court shall dismiss 43
the complaint without prejudice and direct the allegedly 44
aggrieved person to commence a mandamus action in the court of 45
appeals with appropriate jurisdiction as provided in division 46
(C) (1) of section 149.43 of the Revised Code. 47

(D) (1) An allegedly aggrieved person who proceeds under 48
this section shall file a complaint, on a form prescribed by the 49

clerk of the court of claims, with the clerk of the court of 50
claims or with the clerk of the court of common pleas of the 51
county in which the public office from which the records are 52
requested is located. The person shall attach to the complaint 53
copies of the original records request and any written responses 54
or other communications relating to the request from the public 55
office or person responsible for public records and shall pay a 56
filing fee of twenty-five dollars made payable to the clerk of 57
the court with whom the complaint is filed. The clerk shall 58
serve a copy of the complaint on the public office or person 59
responsible for public records for the particular public office 60
in accordance with Civil Rule 4.1 and, if the complaint is filed 61
with the clerk of the court of common pleas, shall forward the 62
complaint to the clerk of the court of claims, and to no other 63
court, within three business days after service is complete. 64

(2) Upon receipt of a complaint filed under division (D) 65
(1) of this section, the clerk of the court of claims shall 66
assign a case number for the action and a special master to 67
examine the complaint. Notwithstanding any provision to the 68
contrary in this section, upon the recommendation of the special 69
master, the court of claims on its own motion may dismiss the 70
complaint at any time. The allegedly aggrieved person may 71
voluntarily dismiss the complaint filed by that person under 72
division (D)(1) of this section. 73

(E)(1) Upon service of a complaint under division (D)(1) 74
of this section, except as otherwise provided in this division, 75
the special master assigned by the clerk under division (D)(2) 76
of this section immediately shall refer the case to mediation 77
services that the court of claims makes available to persons. 78
If, in the interest of justice considering the circumstances of 79
the case or the parties, the special master determines that the 80

case should not be referred to mediation, the special master 81
shall notify the court that the case was not referred to 82
mediation, and the case shall proceed in accordance with 83
division (F) of this section. If the case is referred to 84
mediation, any further proceedings under division (F) of this 85
section shall be stayed until the conclusion of the mediation. 86
Any mediation proceedings under this division may be conducted 87
by teleconference, telephone, or other electronic means. If an 88
agreement is reached during mediation, the court shall dismiss 89
the complaint. If an agreement is not reached, the special 90
master shall notify the court that the case was not resolved and 91
that the mediation has been terminated. 92

(2) Within ten business days after the termination of the 93
mediation or the notification to the court that the case was not 94
referred to mediation under division (E) (1) of this section, the 95
public office or person responsible for public records shall 96
file a response, and if applicable, a motion to dismiss the 97
complaint, with the clerk of the court of claims and transmit 98
copies of the pleadings to the allegedly aggrieved party. No 99
further motions or pleadings shall be accepted by the clerk of 100
the court of claims or by the special master assigned by the 101
clerk under division (D) (2) of this section unless the special 102
master directs in writing that a further motion or pleading be 103
filed. 104

(3) All of the following apply prior to the submission of 105
the special master's report and recommendation to the court of 106
claims under division (F) (1) of this section: 107

(a) The special master shall not permit any discovery. 108

(b) The parties may attach supporting affidavits to their 109
respective pleadings. 110

(c) The special master may require either or both of the 111
parties to submit additional information or documentation 112
supported by affidavits. 113

(F) (1) Not later than seven business days after receiving 114
the response, or motion to dismiss the complaint, if applicable, 115
of the public office or person responsible for public records, 116
the special master shall submit to the court of claims a report 117
and recommendation based on the ordinary application of 118
statutory law and case law as they existed at the time of the 119
filing of the complaint. For good cause shown, the special 120
master may extend the seven-day period for the submission of the 121
report and recommendation to the court of claims under this 122
division by an additional seven business days. 123

(2) Upon submission of the special master's report and 124
recommendation to the court of claims under division (F) (1) of 125
this section, the clerk shall send copies of the report and 126
recommendation to each party by certified mail, return receipt 127
requested, not later than three business days after the report 128
and recommendation is filed. Either party may object to the 129
report and recommendation within seven business days after 130
receiving the report and recommendation by filing a written 131
objection with the clerk and sending a copy to the other party 132
by certified mail, return receipt requested. Any objection to 133
the report and recommendation shall be specific and state with 134
particularity all grounds for the objection. If neither party 135
timely objects, the court of claims shall promptly issue a final 136
order adopting the report and recommendation, unless it 137
determines that there is an error of law or other defect evident 138
on the face of the report and recommendation. If either party 139
timely objects, the other party may file with the clerk a 140
response within seven business days after receiving the 141

objection and send a copy of the response to the objecting party 142
by certified mail, return receipt requested. The court, within 143
seven business days after the response to the objection is 144
filed, shall issue a final order that adopts, modifies, or 145
rejects the report and recommendation. 146

(3) If the court of claims determines that the public 147
office or person responsible for the public records denied the 148
aggrieved person access to the public records in violation of 149
division (B) of section 149.43 of the Revised Code and if no 150
appeal from the court's final order is taken under division (G) 151
of this section, both of the following apply: 152

(a) The public office or the person responsible for the 153
public records shall permit the aggrieved person to inspect or 154
receive copies of the public records that the court requires to 155
be disclosed in its order. 156

(b) The aggrieved person shall be entitled to recover from 157
the public office or person responsible for the public records 158
the amount of the filing fee of twenty-five dollars and any 159
other costs associated with the action that are incurred by the 160
aggrieved person, but shall not be entitled to recover 161
attorney's fees, except that division (G)(2) of this section 162
applies if an appeal is taken under division (G)(1) of this 163
section. 164

(G)(1) Any appeal from a final order of the court of 165
claims under this section or from an order of the court of 166
claims dismissing the complaint as provided in division (D)(2) 167
of this section shall be taken to the court of appeals of the 168
appellate district where the principal place of business of the 169
public office from which the public record is requested is 170
located. However, no appeal may be taken from a final order of 171

the court of claims that adopts the special master's report and 172
recommendation unless a timely objection to that report and 173
recommendation was filed under division (F) (2) of this section. 174
If the court of claims materially modifies the special master's 175
report and recommendation, either party may take an appeal to 176
the court of appeals of the appellate district of the principal 177
place of business where that public office is located but the 178
appeal shall be limited to the issue in the report and 179
recommendation that is materially modified by the court of 180
claims. In order to facilitate the expeditious resolution of 181
disputes over alleged denials of access to public records in 182
violation of division (B) of section 149.43 of the Revised Code, 183
the appeal shall be given such precedence over other pending 184
matters as will ensure that the court will reach a decision 185
promptly. 186

(2) If a court of appeals in any appeal taken under 187
division (G) (1) of this section by the public office or person 188
responsible for the public records determines that the public 189
office or person denied the aggrieved person access to the 190
public records in violation of division (B) of section 149.43 of 191
the Revised Code ~~and obviously filed the appeal with the intent~~ 192
~~to either delay compliance with the court of claims' order from~~ 193
~~which the appeal is taken for no reasonable cause or unduly~~ 194
~~harass the aggrieved person, the court of appeals may shall~~ 195
award reasonable attorney's fees to the aggrieved person ~~in~~ 196
~~accordance with division (C) of section 149.43 of the Revised~~ 197
~~Code. No discovery may be conducted on the issue of the public~~ 198
~~office or person responsible for the public records filing the~~ 199
~~appeal with the alleged intent to either delay compliance with~~ 200
~~the court of claims' order for no reasonable cause or unduly~~ 201
~~harass the aggrieved person. This division shall not be~~ 202

~~construed as creating a presumption that the public office or~~ 203
~~the person responsible for the public records filed the appeal~~ 204
~~with the intent to either delay compliance with the court of~~ 205
~~claims' order for no reasonable cause or unduly harass the~~ 206
~~aggrieved person.~~ 207

(H) The powers of the court of claims prescribed in 208
section 2743.05 of the Revised Code apply to the proceedings in 209
that court under this section. 210

(I) (1) All filing fees collected by a clerk of the court 211
of common pleas under division (D) (1) of this section shall be 212
paid to the county treasurer for deposit into the county general 213
revenue fund. All such money collected during a month shall be 214
transmitted on or before the twentieth day of the following 215
month by the clerk of the court of common pleas to the county 216
treasurer. 217

(2) All filing fees collected by the clerk of the court of 218
claims under division (D) (1) of this section shall be deposited 219
into the state treasury to the credit of the public records 220
fund, which is hereby created. Money credited to the fund shall 221
be used by the court of claims to assist in paying for its costs 222
to implement this section. All investment earnings of the fund 223
shall be credited to the fund. Not later than the first day of 224
February of each year, the clerk of the court of claims shall 225
prepare a report accessible to the public that details the fees 226
collected during the preceding calendar year by the clerk of the 227
court of claims and the clerks of the courts of common pleas 228
under this section. 229

(J) Nothing in this section shall be construed to limit 230
the authority of the auditor of state under division (G) of 231
section 109.43 of the Revised Code. 232

Section 2. That existing section 2743.75 of the Revised Code is hereby repealed. 233
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