

OSU CAN'T MAKE ITS OWN RULES

By: Jack Greiner on September 24, 2020 on graydon.law

The Ohio State University suffered a loss this week in the Ohio Court of Claims this week when [a Special Master issued a Report](#) finding that the University violated the Ohio Public Records Act when it deliberately withheld records relating to an investigation into [Dr. Richard Strauss](#). Strauss was the team doctor for 17 OSU varsity sports and a physician at the university's Student Wellness Center from 1978-98.

Strauss sexually abused at least 177 students and student-athletes during his tenure at Ohio State. Stephen Snyder-Hill, one of Strauss's victims, was interviewed during an investigation conducted by OSU, and later participated in the mediation of a survivor class action lawsuit against the school.

Snyder-Hill made a written request for records of his mediation. OSU delayed providing the records, which led Snyder-Hill to file a complaint in the Ohio Court of Claims. The Ohio Court of Claims provides for a more expedited process for resolving public records disputes than the more traditional mandamus action. One feature of the Court of Claims proceeding is the review by a Special Master, who issues a Report and Recommendation, which the Court of Claims may adopt or reject.

Although OSU ultimately provided the documents to Snyder-Hill, it did so only after a five month delay. Given that the Public Records Act requires the public office to make the records available "promptly" a five month delay would certainly appear to violate the law. And the interesting thing is that Ohio State admitted that it deliberately withheld the records. According to the Special Master's Report, OSU had already located and retrieved the records responsive to the request within a week of Snyder-Hill submitting it. But OSU arbitrarily decided it would not release the records until the final investigation report was released because "the public interest was not served by a piecemeal disclosure, when such a disclosure was outweighed by the privacy interests of the survivors and the other unique factors attendant to the investigation."

That may well have been OSU's belief, but that is no excuse for breaking the law. As the Special Master noted, "[o]f particular concern here, OSU does not offer these arguments as public records exceptions but only as what it thought was 'reasonable' and 'the right thing to do.' . . . To the contrary, OSU is obligated to comply with the requirements of the Public Records Act, and its preference for confidentiality, alone, cannot limit a requester's access

to otherwise public records.”

For the same reason that I can't avoid a speeding ticket by telling the cop that it is in the public interest that I be in court on time, OSU can't invoke its own arbitrary “best interests” exception. The Ohio legislature is very good at crafting exceptions to the Public Records Act. They have adopted so many over the years that they have lapped the alphabet. There are currently exceptions running from (a) to (mm). But even in that smorgasbord of loopholes, OSU couldn't find one to protect the records Snyder-Hill requested. So they made one up. And that is just not how it works.

Thanks to the Special Master for applying the law. Shame on OSU for ignoring it.