



Public Utilities Commission

Mike DeWine, Governor
Jenifer French, Chair

Commissioners

M. Beth Trombold
Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

July 20, 2022

K.M. Kowalski
Energy News Network
aliensnextdoor@yahoo.com

RE: Public Records Request 76-22

Dear Ms. Kowalski:

Thank you for contacting the Public Utilities Commission of Ohio (PUCO). I am writing in response to your public records request. We have included your original request language and our response following that request.

2. The PUCO's ethics code or similar code for conduct by agency commissioners and staff in the discharge of their duties.

Please see the records responsive to your request #2 attached, specifically the Ethics Policy and Executive Order 2019-11D. In addition to the general Ohio ethics laws, Title 49 of the Ohio Revised Code has additional applicable laws.

1. All public records constituting, referring or relating to communications between or among Jenifer French, Dennis Deters, Daniel Conway, Laurence Friedeman, Beth Trombold, Angela Hawkins, Greg Price, Scott Elisar, Judy Lowery, Anna Perry, and/or Sarah Zoeller, on the one hand, and any of the following, on the other: Mike DeWine, Jon Husted, Anne Vogel, Laurel Dawson, Dan McCarthy, Aaron Crooks,, Josh Rubin, Chip Gerhardt, Richard Hills, J.B. Hadden, Maria Haberman, Tom Froehle, Steven Strah, Chuck Jones, Dennis Chack, Dan Tierney, Amber Riddell, Julia Poling, Michael Murry, Daniel Murry, Amy Brenner, and/or Sam Randazzo for the period from November 19, 2020 through April 26, 2022, and which refer or relate to any of the following:

In accordance with Ohio Revised Code (R.C.) 149.43(B)(2), we find your request #1 with subparts a-e to be overly broad because it is so inclusive that the PUCO is unable to identify the records sought based on the manner in which the office routinely organizes and accesses records. Further, the wording of the request is vague and/or subject to interpretation. Accordingly, your request is denied pursuant to R.C. 149.43(B)(2); however, we are happy to work with you to clarify and revise your request.¹

¹ Ohio public records law requires a requester to identify the records he or she is seeking with "reasonable clarity," so that the public office can identify responsive records based on the manner in which it ordinarily maintains and accesses the public records it keeps." *Ohio Sunshine Law: An Open Government Resource Manual* 2021, pg. 12. See also, *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105; *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 577 N.E.2d 444 (10th Dist. 1989). *State ex rel.* (614) 466-3016
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To further provide clarity as to how to revise your request, a governmental office has no duty to “seek out and retrieve those records which would contain the information of interest to the requester.” *State ex rel. Fant v. Tober*, 68th Dist. Cuyahoga No. 63737, 1993 WL 173743, *1, aff’d, 68 Ohio St.3d 117, 1993-Ohio-154, 623 N.E.2d 1202 (1993).² While your request provides the individuals and a timeframe, there is a lack of specificity as to what existing record you are seeking. *Id.* 92 Ohio St.3d 312. Our communications may be retrieved with information such as the individuals “to” and “from”, as well as a timeframe and subject matter of a specific existing record. As noted in Ohio Public records law R.C. 149.43(B)(2), below we are explaining how our communications are ordinarily maintained and accessed, and providing additional information so you can successfully revise and clarify your request for us to be able to respond.

- (a) *Any efforts, concerns or issues referring or relating to the public’s confidence in the integrity of the PUCO or the agency’s public image in the midst or in the wake of claims about alleged corruption by Sam Randazzo or anyone else at the PUCO, including but not limited to any actions to investigate the substance of such allegations and respond with corrective action;*
- (d) *Any allegations or admissions made by FirstEnergy, the Ohio Attorney General or the Office of the Ohio Consumers’ Counsel referring or relating to payments arranged by current or former officers of FirstEnergy (though the company itself or any of its current or former subsidiaries) at any time from 2012 to the present to Sam Randazzo or anyone else currently or formerly employed by the PUCO; and/or*
- (e) *Any efforts by or on behalf of the PUCO to investigate whether Sam Randazzo or anyone else currently or formerly employed by the PUCO had ex parte communications or acted in any way outside the scope of on-the-record cases to promote the interests of or otherwise benefit FirstEnergy or any of its regulated utilities or affiliates.*

While your requests (a, d, and e) provides the individuals and a timeframe, as explained further above, there is a lack of specificity as to what existing record you are seeking. *Id.* 92 Ohio St.3d 312.

As you may be aware the PUCO has opened four, ongoing investigations in response to the criminal investigations brought by the U.S. Department of Justice surrounding the passage of Amended Substitute House Bill 6, during the 133rd General Assembly. Background information can be found on our website, as well as in the applicable case dockets: <https://puco.ohio.gov/utilities/electricity/resources/hb-6-related-investigations>.

It is of note, the Commission expanded the scope of the Delivery Capital Recovery Rider audit in Case No. 20-1629-EL-RDR to examine “certain transactions ... that were either improperly classified,

Glasgow v. Jones, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 17, quoting *State ex rel. Morgan v. City of New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 29; *State ex rel. Dillery v. Iscman* (2001), 92 Ohio St.3d 312, 314.

² A public office is under no obligation to search for records containing selected information. *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 30 (2006), citing *State ex rel. Lanham v. Ohio Adult Parole Auth.*, 80 Ohio St.3d 425, 1997-Ohio-104, 687 N.E.2d 283 (1997). Public agencies are not required to perform research or create new files in responding to requests for records. *State ex rel. Daugherty v. Mohr*, 10th Dist. Franklin No. 11AP-5, 2011-Ohio-6453, ¶ 8; *See also Paramount Advantage v. Ohio Dept. of Medicaid*, Ct. of Cl. No. 2021-00262PQ, 2021-Ohio-4180, ¶ 19, 21-22 (finding request for documents “reflecting . . . internal communications” between individuals an overly broad discovery-style request).

misallocated ... or lacked supporting documentation” the utility stated in a recent SEC filing that may or may not have been included in rates charged to customers. Additionally, on December 15, 2021, a [Commission entry](#) expanded the scope of this audit to investigate an apparent nondisclosure of "side agreements" in the utilities' electric security plan proceedings. The Commission's entry stayed this portion of the proceeding during the pendency of other criminal and civil litigation.

(b) House Bill 6, any proposed legislation to repeal all or part of HB 6:

While your request provides the individuals and a timeframe, as explained further above, there is a lack of specificity as to what existing record you are seeking. *Id.* 92 Ohio St.3d 312. House Bill 6 was effective October 22, 2019, prior to the timeframe of your request, and therefore, bill drafts would not be in existence for the timeframe of your request. Additionally, we request additional specificity as to what records you are requesting and what specific proposed legislation to repeal all or part of HB 6 you are requesting. We also note that legislative bill drafts can be found on the following webpage, if you would like to specify draft bills: <https://www.legislature.ohio.gov/legislation/search>.

(c) Any cases or matters involving FirstEnergy or any of its utilities;

As noted above, as this request is overly broad, we provide additional background on how you can specify in your request what cases you are interested and what timeframes. The public docketing system, called the docketing information system (DIS) can be found at: <https://dis.puc.state.oh.us/>. The advanced search option allows you to search company names (e.g. FirstEnergy, Toledo Edison Company, Cleveland Electric Illuminating Company, or Toledo Edison Company). You may also narrow your search by date and other case codes, such as industry or purpose codes (<https://puco.ohio.gov/documents-and-rules/resources/case-code-system>).

As all or portions of your request have been denied, we are happy to work with you to revise your request. As provided by Ohio Law, in order to assist you, please see the following link to the PUCO records retention schedule: <https://apps.das.ohio.gov/RIMS/Schedule>. If you require any further assistance or have additional questions, please feel free to contact me at your earliest convenience.

Sincerely,

Donald Leming

Don Leming
Deputy Legal Director