

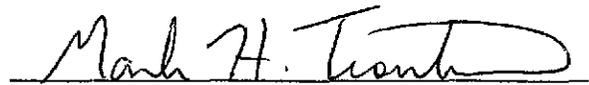


**RESPONDENT SENECA COUNTY BOARD OF COMMISSIONERS' LIST OF  
ADDITIONAL AUTHORITIES**

Respondents Seneca County Board of Commissioners, pursuant to S. Ct. R. IX, Sect. 8, hereby provide the following list of citations to authorities that may be relied upon during oral argument and are not cited in the merit briefs:

1. Douglas Heingartner, *Back Together Again*, N.Y. TIMES, July 17, 2003, at G1.
2. <http://www.churchstreet-technology.com>
3. <http://www.ohiohistory.org/ohiojunction/erc/RMGuide/ERGuidelines.htm>
4. *Hunter v. Carr* (Feb. 22, 2000), 5th Dist. No. 1999CA00134.
5. Kevin Mandia, Chris Prosis & Matt Pepe, INCIDENT RESPONSE & COMPUTER FORENSICS (McGraw Hill 2003)
6. *Int'l Union, United Auto., Aerospace & Agricultural Implement Workers of Am. v. Voinovich* (1995), 100 Ohio App.3d 372, 654 N.E.2d 139.
7. Jim Boyce, Beth Sheresh & Doug Sheresh, MICROSOFT OUTLOOK 2007 INSIDE OUT (Microsoft Press 2007).
8. *Keller v. City of Columbus*, 100 Ohio St.3d 192, 2003-Ohio-5599, 797 N.E.2d 964.
9. Mary Taylor, Ohio Auditor of State & Nancy Rogers, Ohio Attorney General, OHIO'S SUNSHINE LAWS 2008: AN OPEN GOVERNMENT RESOURCE MANUAL (2008).
10. *State ex rel. Boccuzzi v. Cuyahoga Cty. Bd. of Commrs.*, 112 Ohio St.3d 438, 2007-Ohio-323, 860 N.E.2d 749.
11. *State ex rel. Esarco v. Youngstown City Council*, 116 Ohio St.3d 131, 2007-Ohio-5699, 876 N.E.2d 953.
12. *State ex rel. Pennington v. Gundler* (1996), 75 Ohio St.3d 171, 661 N.E.2d 1049.
13. *State ex rel. Police Officers for Equal Rights v. Lashutka* (1995), 72 Ohio St.3d 185, 648 N.E.2d 808.
14. *State ex rel. Steffen v. Kraft* (1993), 67 Ohio St.3d 439, 619 N.E.2d 688.

Respectfully submitted,



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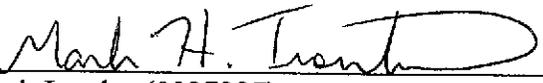
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on September 8, 2008, to the following via regular U.S. mail:

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Copyright 2003 The New York Times Company  
The New York TimesJuly 17, 2003 Thursday  
Late Edition - Final**SECTION:** Section G; Column 3; Circuits; Pg. 1**LENGTH:** 1723 words**HEADLINE:** Back Together Again**BYLINE:** By DOUGLAS HEINGARTNER**DATELINE:** BERLIN**BODY:**

THROUGHOUT the 1980's, Sascha Anderson, a poet, musician and literary impresario, was one of the leading voices to speak out against the East German government and its dreaded secret police, the Stasi.

But his credibility gradually evaporated after the Communist government's collapse as rumors about him acquired the weight of proof: he had been informing on his dissident compatriots all along.

He had been told that his Stasi file had been destroyed. In fact, it was manually reconstructed from some of the millions of shreds of paper that panicked Stasi officials threw into garbage bags during the regime's final days in the fall of 1989.

Now, if all goes as planned by the German government, the remaining contents of those 16,000 bags will also be reconstructed.

Advanced scanning technology makes it possible to reconstruct documents previously thought safe from prying eyes, sometimes even pages that have been ripped into confetti-size pieces. And although a great deal of sensitive information is stored digitally these days, recent corporate scandals have shown that the paper shredder is still very much in use.

"People perceive it as an almost perfect device," said Jack Brassil, a researcher for Hewlett-Packard who has worked on making shredded documents traceable. If people put a document through a shredder, "they assume that it's fundamentally unrecoverable," he said. "And that's clearly not true."

In its crudest form, the art of reconstructing shredded documents has been around for as long as shredders have. After the takeover of the United States Embassy in Tehran in 1979, Iranian captors laid pieces of documents on the floor, numbered each one and enlisted local carpet weavers to reconstruct them by hand, said Malcolm Byrne of the National Security Archive at George Washington University. "For a culture that's been tying 400 knots per inch for centuries, it wasn't that much of a challenge," he said. The reassembled documents were sold on the streets of Tehran for years.

That episode helped convince the United States government to update its procedures for destroying documents.

The expanded battery of techniques now includes pulping, pulverizing and chemically decomposing sensitive data. Yet these more complex methods are not always at hand in an emergency, which is why the vagaries of de-shredding will be of interest to intelligence officials for some time to come.

"It's been an area of interest for a very long time," said William Daly, a former F.B.I. investigator who is a vice president at Control Risks Group, a security consulting firm. "The government is always trying to keep ahead of the curve."

Like computer encryption and hacking, "it's kind of a cat-and-mouse game, keeping one step ahead," he said. "That's why the government is always looking at techniques to help them ensure their documents are destroyed properly."

Modern image-processing technology has made the rebuilding job a lot easier. A Houston-based company, ChurchStreet Technology, already offers a reconstruction service for documents that have been conventionally strip-shredded into thin segments. The company's founder, Cody Ford, says that reports of document shredding in recent corporate scandals alerted him to a gap in the market. "Within three months of the Enron collapse at end of 2001, we had a service out to electronically reconstruct strip shreds," he said.

The Stasi archives are a useful reference point for researchers tackling the challenge, though perhaps more for the scale than the sophistication of the shredding. Most of the Stasi papers were torn by hand because the flimsy East German shredding machines collapsed under the workload. The hastily stored bags of ripped paper were quickly discovered and confiscated.

In 1995 the German government commissioned a team in the Bavarian town of Zirndorf to reassemble the torn Stasi files one by one. Yet by 2001, the three dozen archivists had gone through only about 300 bags, so officials began a search for another way to piece together the remaining 33 million pages a bit faster.

Four companies remain candidates for the job, including Fraunhofer IPK of Berlin, part of the Fraunhofer Gesellschaft research institute, which helped develop the MP3 music format. The institute is drafting plans to sort, scan and archive the millions of pages within five years, drawing on expertise in office automation, image processing, biometrics and handwriting analysis as well as sophisticated software.

"It's more than just the algorithms about the puzzles," said Bertram Nickolay, the head of the security and testing technologies department. Indeed, the archive is a massive grab bag of randomly torn documents, many with handwritten and typewritten text on the same page. Combining all these technologies in a project of this scope "is on the borders of what's possible," Mr. Nickolay said.

His system's accuracy rate is about 80 percent. "It will take time for the algorithms to be optimized," Mr. Nickolay said, noting that handwriting analysis began with accuracy levels of around 50 percent, and are now at 90 percent and above.

Some of the companies competing for the job concentrated on the shape, color and perforations of the shreds, while other contenders opted for semantically driven systems, which looked for keywords and likely text matches.

The Fraunhofer plan is to combine its smart scanning software with the know-how of the Zirndorf archivists, who have amassed years of experience working with these tiny pieces of history. After all the shreds have been scanned (at 200 dots per inch), the interactive software will suggest possible matches, which an operator can accept or reject.

While Fraunhofer IPK eventually plans to use a similar technique, several companies say they can do so already.

ChurchStreet's software analyzes the graphical patterns that go to the edge of each piece. First, workers paste the random shreds onto standard sheets of paper, which takes three to seven minutes per page. The pages are scanned, and

software analyzes the shreds for possible matches.

Mr. Ford, the company founder, said the ChurchStreet service can recover up to 70 percent of a document's content, although he stressed that the goal was to get blocks of information rather than to re-create the original formatting. The blocks are presented to the client, who determines where they might belong in the overall scheme. "We don't make any guesswork about reconstruction," Mr. Ford said. "We make no assumptions."

ChurchStreet, whose clients are mainly law agencies and private law firms, charges roughly \$2,000 to reconstruct a cubic foot of strip-shreds. A cubic foot of shreds is generally less than 100 pages. Mr. Ford said ChurchStreet would soon offer a service to reconstruct cross-shredded documents -- that is, those cut in two directions -- for \$8,000 to \$10,000 per cubic foot. A common standard in cross-shredding is particles one thirty-second by seven-sixteenths of an inch, which results in thousands of grain-like shreds per page.

Cross-shredding makes the job a lot trickier, but not for lack of processing power. "The problem is not whether it's possible with the software, which is possible," said Werner Vogeli, the managing director of the German office of SER Solutions, a company in Dulles, Va., that also competed for the contract to reconstruct the Stasi documents. "The problem is how to scan these documents."

Fred Cohen, a security consultant who reconstructed many pages while working at Sandia National Laboratories, also sees limits. "When you get down to very small shreds, then the numbers start to eat you," he said. "You start to get to where there isn't enough text per shred to be of any use. You've got a completely black shred; whether it's the middle of the cross of a t or the dot of an i, you can't tell."

Adding to the challenge, the smaller the pieces are, the farther apart they can fall, and thus the less likely they are to cluster in a conveniently retrievable form. Security experts also say that using large type (for less text per shred), and feeding the paper into a shredder perpendicular to the direction of the text (so no complete phrases stay together) makes shredding less vulnerable.

Professional document reconstructions are generally recognized by the courts in much the way that fingerprint or handwriting evidence is. An expert may not be able to vouch for the accuracy of the information on a given page, said Mr. Daly, the former F.B.I. investigator, but he can testify that a reconstructed document "was at one time one piece of paper that was cut into little pieces of paper, and now it's back into one piece of paper."

Mr. Daly added that investigators often use reassembled pages as part of a larger forensic puzzle. "Once we have a hard-copy document, we can then go back and look at databases and put in search criteria, and to be able to actually come up with the original electronic version," he said. "One becomes a pathway to the other."

The demand for such investigative services is clear. "I probably get a call every month," said Robert Johnson of the National Association for Information Destruction, an American trade group, from clients looking for "a way to reverse the process."

Other projects, like Mr. Brassil's at Hewlett-Packard, focus on designing a shredder that leaves telltale traces on the documents it destroys, allowing them to be pinpointed later.

In Germany, meanwhile, a decision about whether to proceed with the reconstruction of Stasi documents is not expected before September. Mr. Vogeli of SER Solutions, whose firm withdrew from bidding for the project, said he doubted that financing would materialize. "These documents contain lots of information that might be dangerous to a few politicians who are still active, still in power," he said. "So there's no political majority for any such investment."

Sascha Anderson, the dissident discredited by the files, is among those who hope the project goes forward. "Of course I would have preferred that they weren't found," he said by phone from Frankfurt. "But I realize that it's a unique chance for a society to have access to this information."

And since he was exposed, he said, he has been able to sleep better: "I've ultimately been freed of my burden by history."

**URL:** <http://www.nytimes.com>

**GRAPHIC:** Photos: PUZZLE -- Ottmar Buennemeyer, above, digitally reassembles shredded documents that were discarded by the East German secret police after the Communist government collapsed. The process is much faster than manual work by archivists, right.; UNSHREDDER -- A software program called Reconstruct can rebuild an image of a document from its pieces. Professional reconstructions are accepted by the courts in much the way that fingerprints are. (Mark Simon for The New York Times); (BTSU Berlin)(pg. G6); (Ignacio Rodriguez)(pg. G1)

**LOAD-DATE:** July 17, 2003

## Westlaw

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Hunter v. Carr  
Ohio App. 5 Dist.,2000.  
Only the Westlaw citation is currently available.

CHECK OHIO SUPREME COURT RULES FOR  
REPORTING OF OPINIONS AND WEIGHT OF  
LEGAL AUTHORITY.

Court of Appeals of Ohio, Fifth District, Stark  
County.  
Mary Beth HUNTER, et al., Relators,  
v.  
Judy CARR, Mayor Of City Of Alliance, et al., Re-  
spondents.  
No. 1999CA00134.

Feb. 22, 2000.

Civil Appeal, Case No. 1999CA00134.

Charles D. Hall, III, Hall Law Firm, Canton, OH,  
and Allan L. Krash, Alliance, OH, For Relators.  
Randolph L. Snow, Thomas W. Connors, Black,  
McCuskey, Souers & Arbaugh, Canton, OH, For  
Respondents.

Before HOFFMAN, P.J., FARMER, and WISE, JJ.

*OPINION*

WISE.

\*1 Respondent, Judy Carr, at all relevant times herein, was the duly elected and authorized Mayor of Respondent City of Alliance, Ohio. Mayor Carr, by virtue of her official position as Mayor of the City of Alliance, was a member of the Board of Trustees ("Board") of the Alliance Citizens Health Association ("Association"). The Code of Regulations provided, in pertinent part:

## ARTICLE II

*BOARD OF TRUSTEES*

Section 2.1 The Board of Trustees shall consist of thirteen (13) members of the corporation. Twelve (12) members of the Board of Trustees shall be elected by the members from the corporation at large, four (4) of whom shall be elected each year. Of the four (4) Trustees elected each year, three (3) shall be from those nominated by the Association of Nominating Committee and one (1) shall be from the person(s) nominated by the Board Nominating Committee. *The remaining one (1) Trustee shall be the Mayor of the City of Alliance or his designee, who will have a vote and be counted for quorum.* (Emphasis added).

As a member of the Board, Mayor Carr received copies of the Association's minutes prior to each board meeting.

On March 10, 1999, Relators Mary Beth Hunter and Aleida Zellweger, residents of the City of Alliance, requested Mayor Carr permit them to inspect, pursuant to R.C. Section 149.43, "all records and documents belonging to, in the possession, custody or control of, or available to you in the City of Alliance concerning Alliance Community Hospital and the decision of the Hospital Board to use eminent domain in acquiring property." Relators specifically sought to inspect:

- (1) Minutes of all Meetings of the Alliance Community Hospital Board of Trustees including all information, documents and reports submitted to the Board members.
- (2) All correspondence directed to you or any other official of the City of Alliance from Alliance Community Hospital or any related body.

On March 29, 1999, having received no response from Mayor Carr, relators again requested access to and inspection of records described above. On March 29, 1999, Mayor Carr responded to relators

as follows:

As a member of the Board of Directors of the Citizens Health Association, I do not believe it is my responsibility to maintain the 'official records' of the organization, be they public or private. It is my understanding that the Hospital is a not-for-profit, private corporation and would be required to maintain a record of their proceedings, as do other private corporations.

In addition, I do not believe individual members of Alliance City Council are required to keep minutes of council meetings, copies of ordinances or any other documents since the Clerk of Council is required to prepare and maintain such records.

The official records of the Hospital are deposited at their facility and if such are required (sic) that is the appropriate place to request them.

\*2 Mayor Carr admitted that she regularly received copies of the Association's Board minutes at her office as mayor. She also indicated that the minutes were addressed to her in her official capacity as mayor. However, Mayor Carr testified that after she would receive the minutes at her office, "I took them home and then destroyed them." When questioned further on the issue, Mayor Carr indicated that she took the records home and "shredded them". Mayor Carr also testified that she "did not know" why she would take them home and destroy them.

Mayor Carr testified that in order to comply with Alliance City Ordinance Chapter 115 entitled "Public Records", it was her understanding, as Mayor of the City of Alliance, she was to keep everything that came into her office until the City Records Retention Board authorized their disposal. Mayor Carr testified that the Association's minutes documented her participation, as mayor, and documented any discussions and actions taken as a member of the Board. The minutes would also document the organization, functions, policies, de-

isions and procedures and operations of the Board.

The issue before this Court is whether the minutes that were delivered to Mayor Carr, in her official capacity as Mayor of the City of Alliance, were public records and subject to disclosure pursuant to R.C. Section 149.43. For the reasons that follow, we find that said records are public and were subject to disclosure.

R.C. Section 149.43(B) requires a governmental unit to promptly prepare and allow inspection of all public records and to provide copies of those records within a reasonable time. With a few specific exceptions, R.C. Section 149.43(A)(1) defines a "public record" as any record kept by a public office. R.C. Section 149.011(G) defines "records" of a public office to include:

(A) Any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. (Emphasis added.)

There can be little doubt, from the evidence produced in this matter, the mayor, acting in her official capacity, received minutes under the jurisdiction of her public office as mayor and those minutes documented the mayor's decisions and other activities as a member of the Board. The fact that the Association was a private entity does not affect our decision. As explained in *State ex rel. Mazzaro v. Ferguson* (1990), 49 Ohio St.3d 37, 550 N.E.2d 464, the Ohio Supreme Court stated: "the disjunctive view in R.C. 149.43(C) manifests an intent to afford access to public records, even when a private entity is responsible for the records."

We hold, when the mayor received the minutes at issue she was required to maintain them and make them available to the public as required by R.C. Section 149.43. Her failure to maintain those re-

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 Not Reported in N.E.2d, 2000 WL 222044 (Ohio App. 5 Dist.)

cords and her act of removing them from her public office and destroying them in her private home is a violation of the Public Records Laws.

\*3 Accordingly, we hereby grant Relators' Motion for Summary Judgment and find that the minutes of the Board of Trustees of Alliance Community Hospital are "public records" pursuant to R.C. Section 149.43. However, we must deny Relators' request that respondents "produce" the records. As Mayor Carr has testified, those records were destroyed by her.

Respondents' motion for summary judgment is denied.

This Court sua sponte dismisses count two of Relators' complaint for want of jurisdiction. See. R.C. Section 149.351(B).

There being no other relief requested in the motions pending in this Court, we hereby enter final judgment in favor of Relators. This Court does retain jurisdiction over Relators' request for attorney fees.

IT IS SO ORDERED.

Farmer, P. J., concurs. Hoffman, J., concurs in part and dissents in part.

I concur in the majority's analysis and decision the minutes at issue are public records and Respondent Mayor violated the Public Records Law when she failed to maintain those records by destroying them. However, unlike the majority, I would grant relators' request respondents produce the records. Although the Mayor may have destroyed her copy of the minutes, the minutes are still in existence and are available for reproduction because of the Mayor's continued position on the Board of Trustees FN1.

FN1. Since the commencement of this action, a new Mayor has been elected and assumed office. The new Mayor is automatically substituted as a party pursuant to Civ. R. 25(D)(1).

#### JUDGMENT ENTRY

For the reasons stated in our accompanying Memorandum-Opinion, Relators' motion for summary judgment is granted. Count two of Relators' complaint is dismissed. Respondents' motion for summary judgment is overruled. This Court retains jurisdiction on Relators' prayer for attorney fees.

Ohio App. 5 Dist.,2000.  
 Hunter v. Carr  
 Not Reported in N.E.2d, 2000 WL 222044 (Ohio App. 5 Dist.)

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