

IN THE SUPREME COURT OF OHIO

STATE OF OHIO *ex rel.* THE TOLEDO,  
BLADE CO.,

Relator,

v.

SENECA COUNTY BOARD OF  
COMMISSIONERS,

Respondent.

CASE NO. 07-1694

Original Action in Mandamus

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NOTICE OF COMPLIANCE BY SENECA COUNTY COMMISSIONERS WITH OHIO  
SUPREME COURT'S DECEMBER 9, 2008 MANDAMUS ORDER

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The Toledo Blade Co.*

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ISAAC, BRANT, LEDMAN & TEETOR, LLP  
250 East Broad Street, Suite 900  
Columbus, Ohio 43215  
614-221-2121 (telephone)  
614-365-9526 (facsimile)  
*Counsel for Respondents Seneca County Commissioners*

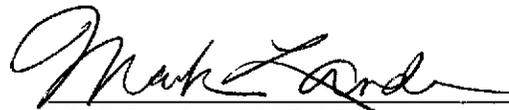


**NOTICE OF COMPLIANCE BY SENECA COUNTY COMMISSIONERS WITH OHIO  
SUPREME COURT'S DECEMBER 9, 2008 MANDAMUS ORDER**

The Seneca County Board of Commissioners provides notice that it has fully complied with the Court's December 9, 2008 Mandamus Order. The Commissioners avoided potential disputes by hiring the Toledo Blade's expert to perform the very searches that the Toledo Blade had proposed. See attached Affidavit of Matthew A. Zuccarell.

The cost of compliance was over \$20,000.

On February 9, 2009, the Commissioners produced all additional emails responsive to the Toledo Blade's public records requests. The additional emails reiterate information already in the public domain. Notably, the additional emails disprove the Blade's claim in this litigation that "the available evidence strongly indicates that the Board's decision was reached in violation of the Open Meetings Act..." and that "the emails Relator seeks are likely to confirm that conclusion." (page one of their Brief).



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Columbus, Ohio 43215-3742

(614) 221-2121 (telephone)

(614) 365-9516 (facsimile)

*Counsel for Respondents Seneca County  
Commissioners*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on February 9, 2009 to the

following counsel via regular U.S. mail:

Fritz Byers, Esq.  
824 Spitzer Building  
Toledo, Ohio 43064  
*Counsel for Relator State ex rel. Ohio  
The Toledo Blade Co.*

A handwritten signature in black ink, appearing to read "Mark Landes", is written over a horizontal line.

Mark Landes (0027227)

Mark H. Troutman (0076390)

Mark R. Weaver (0065769)

ISAAC, BRANT, LEDMAN & TEETOR LLP

*Counsel for Respondents Seneca County  
Commissioners*

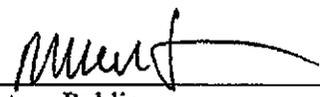


6. I made forensic copies of the data on the hard drives that were in the six subject computers (three Seneca County Commissioners and three computers used by office staff ) on January 22, 2009.
7. In order to satisfy the public records requests at the direction of the Commissioners, I used methods that I had described for the Blade in an affidavit for them that is attached as Exhibit D. Although the attached version is unsigned, I verify that all information contained in that affidavit is true and correct based upon my personal knowledge.
8. Notably, it took me hours longer than indicated in that Affidavit. As such, the scope of my efforts exceeded those that I envisioned when I provided Exhibit D to the Toledo Blade.
9. After my efforts to retrieve the data referred to above, I made all of this data available for review by counsel for the Seneca County Commissioners.
10. I estimate that I spent 71 hours on the imaging and searches described in my affidavit. This will cost the Seneca County Board of Commissioners approximately \$12,900.

AFFIANT FURTHER SAYETH NAUGHT.

  
\_\_\_\_\_  
Matthew A. Zaccarell  
Forensic computer expert for Toledo Blade,  
Inc. in litigation and Seneca County  
Commissioners for forensic recovery efforts

Sworn to and subscribed in my presence on February 9<sup>th</sup>, 2009.

  
\_\_\_\_\_  
Notary Public

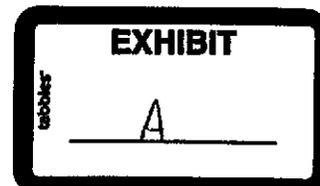
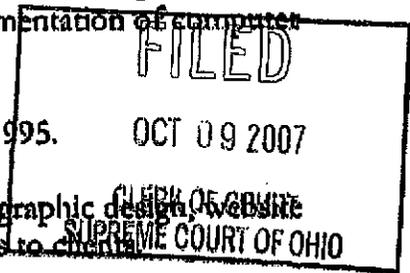
**RICHARD G. MARTIN**  
Notary Public, State of Ohio  
My Commission Expires  
According to ORC 147.03

**AFFIDAVIT OF MATTHEW A. ZUCCARELL**

**07 - 1694**

I, Matthew A. Zuccarell, being first duly sworn, state as follows:

1. I am over the age of 18 and am competent to testify. I have personal knowledge of the matters stated in this Affidavit.
2. I am a citizen and resident of the United States, residing in Maumee, Ohio.
3. I am the Networking Manager of Computol Inc., located at 118 East Third St., Suite C, Perrysburg, OH 43551.
4. My duties at Computol include all forensic data recovery services, management of computer and network technicians, and the design and implementation of computer networks.
5. I have been employed at Computol Inc. since November of 1995.
6. Computol is a media company that provides web site design, graphic design, website hosting, email, database development and automation services to clients.
7. Computol is also a computer services company that provides computer forensic data recovery and network engineering and consulting.
8. Computol has provided forensic data recovery services since at least as early as 2004.
9. I am also an adjunct professor at Owens State Community College, located at 30335 Oregon Rd., Toledo, OH 43551.
10. My duties at Owens include teaching computer technology and diagnosis and repair of computer hardware and software.
11. Based on my training and experience, I can testify to a reasonable scientific certainty that it is frequently possible to recover deleted electronic mail (e-mail) messages from a personal computer, server, personal handheld device, or an external memory storage device.
12. Deleted e-mail, or portions thereof, may be retained on a harddrive even though the e-mail was deleted because the e-mail data will reside on the harddrive until the space where the data exists is overwritten by new data.
13. Deleted e-mail, as well as other data and files, is frequently recoverable by scanning a harddrive with the appropriate forensic data recovery software and hardware.
14. Backups of the email messages, including tape or disc backups, may be available.



15. If the email services are hosted remotely, the hosting company may maintain backups or email logs.
16. Recovered e-mail and data may be produced in electronic form or hard copy for review and analysis.
17. It is not possible to know whether deleted email messages or other data is recoverable until forensic recovery and analysis is attempted.
18. Deleted email or other data may sometimes be recovered months or years after deletion.
19. Further affiant sayeth naught.

*Matthew A. Zuccarelli*  
 Matthew A. Zuccarelli

State of Ohio )  
 ) SS:  
 County of Wood )  
 )

Sworn to and subscribed in my presence this 9<sup>th</sup> day of October, 2007.

*Michael E. Dockins*  
 Notary Public



**MICHAEL E. DOCKINS**  
 Notary Public  
 In and for the State of Ohio  
 My Commission Expires  
 According to O.R.C. 147.03

**From:** "Tanya Hemmer" <themmer@seneca-county.com>  
**To:** <marktroutman@isaacbrant.com>  
**Date:** 8/7/2007 11:00:05 AM  
**Subject:** FW: Toledo Blade Records Request

Good Morning, Mark. Can you please review this and give us a call? Thanks Mark!

Tanya Hemmer, Clerk  
Seneca County Commissioners  
111 Madison Street  
Tiffin, Ohio 44883

-----Original Message-----

**From:** Cindy Keller [mailto:ckeller@seneca-county.com]  
**Sent:** Tuesday, August 07, 2007 10:57 AM  
**To:** 'Stacy Wilson'; 'Tanya Hemmer'; dsauber@seneca-county.com; 'Benjamin E. Nutter'; mbridinger@seneca-county.com  
**Subject:** FW: Toledo Blade Records Request

Lucinda S. Keller  
Seneca County Administrator  
111 Madison Street  
Tiffin, Ohio 44883  
ckeller@seneca-county.com  
419-447-4550

-----Original Message-----

**From:** steve.eder@gmail.com [mailto:steve.eder@gmail.com] On Behalf Of Steve Eder (Toledo Blade)  
**Sent:** Monday, August 06, 2007 5:03 PM  
**To:** ckeller@seneca-county.com  
**Subject:** Toledo Blade Records Request

August 6, 2007

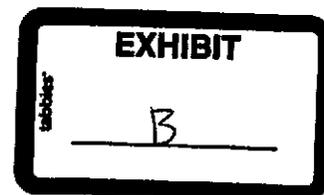
Cindy Keller  
Seneca County Administrator  
111 Madison St.  
Tiffin, OH 44883

Ms. Keller:

This is a request pursuant to Section 149.43 of the Ohio Revised Code:

Under its provisions, The Blade requests to review records of all outgoing and incoming email messages to or from Seneca County Count Commissioners David G. Sauber, Sr., Michael A. Bridinger, and Benjamin E. Nutter since Jan. 1, 2007. This includes, but is not limited to, all sent messages, received messages, deleted messages, and drafts of messages to or from the previously stated individuals.

All records available in electronic or digital formats should be provided in electronic or digital formats. Additionally, requested



documents should be provided to The Blade as they become available and as quickly as possible.

Should any portion of this request be denied in whole or in part, I request a written justification for its denial, along with a citation of the appropriate Public Records Act exemption being claimed for each document, or portion thereof, withheld.

Thanks for your attention. I can be reached at 419-304-1680. My email is [seder@theblade.com](mailto:seder@theblade.com).

Sincerely,  
Steve Eder

Reporter  
Toledo Blade  
419-304-1680

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Steve Eder  
The (Toledo) Blade  
419-304-1680  
419-724-6272  
248-506-3815  
[www.toledoblade.com](http://www.toledoblade.com)

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CC: <[marklandes@isaacbrant.com](mailto:marklandes@isaacbrant.com)>

**From:** "Cindy Keller" <ckeller@seneca-county.com>  
**To:** "Mark Landes" <marklandes@isaacbrant.com>  
**Date:** 8/23/2007 8:38:54 AM  
**Subject:** FW: Expanded Public Records Request

Mark,

This was the latest. The phone bills are submitted to the Auditor's office for payment and they keep the invoices.

We know that Mr. Schock's computer had nothing on it when he left office.

We await your guidance.

Lucinda S. Keller  
Seneca County Administrator  
111 Madison Street  
Tiffin, Ohio 44883  
ckeller@seneca-county.com  
419-447-4550

—Original Message—

**From:** steve.eder@gmail.com [mailto:steve.eder@gmail.com] On Behalf Of Steve Eder (Toledo Blade)  
**Sent:** Wednesday, August 22, 2007 12:57 PM  
**To:** ckeller@seneca-county.com  
**Subject:** Expanded Public Records Request

August 22, 2007

Cindy Keller  
Seneca County Administrator  
111 Madison St.  
Tiffin, OH 44883

Ms. Keller:

This is a request pursuant to Section 149.43 of the Ohio Revised Code:

Under its provisions, The Blade requests to review records of all outgoing and incoming email messages to or from Seneca County County Commissioners David G. Sauber, Sr., Joseph Schock, and Benjamin E. Nutter from Jan. 1, 2006 through Dec. 31, 2006. This includes, but is not limited to, all sent messages, received messages, deleted messages, and drafts of messages to or from the previously stated individuals.

Additionally, The Blade requests to review all phone records for David G. Sauber, Sr., and Benjamin E. Nutter, Joseph Schock, and Mike Bridinger, from Jan. 1, 2006 to present.

All records available in electronic or digital formats should be provided in electronic or digital formats. Additionally, requested documents should be provided to The Blade as they become available and as quickly as possible.



Should any portion of this request be denied in whole or in part, I request a written justification for its denial, along with a citation of the appropriate Public Records Act exemption being claimed for each document, or portion thereof, withheld.

Thanks for your attention. I can be reached at 419-304-1680. My email address is [seder@theblade.com](mailto:seder@theblade.com).

Sincerely,  
Steve Eder

Reporter  
Toledo Blade  
419-304-1680

---

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CC: <[marktroutman@isaacbrant.com](mailto:marktroutman@isaacbrant.com)>

## AFFIDAVIT OF MATTHEW A. ZUCCARELL

I, Matthew A. Zuccarell, being first duly sworn, state as follows:

1. I am over the age of 18 and am competent to testify. I have personal knowledge of the matters stated in this Affidavit.
2. I am a citizen and resident of the United States, residing in Maumee, Ohio.
3. I am the Networking Manager of Computol Inc., located at 118 East Third St., Suite C, Perrysburg, OH 43551.
4. My duties at Computol include all forensic data recovery services, management of computer and network technicians, and the design and implementation of computer networks.
5. I have given an affidavit in this case, dated October 9, 2007, and I reaffirm my testimony in that affidavit.
6. In the course of my work, I have been retained to attempt to recover deleted email messages through the analysis of hard drives in personal computers.
7. Indeed, I have done this type of work in the context of pending or threatened litigation relating to the content of deleted email messages.
8. In that instance, I was able to retrieve in usable form a number of deleted email messages, including email messages that appeared to have been electronically "shredded" with secure-deletion software.
9. The process of retrieving deleted computer files, including email messages, entails a physical visit to the computers in question and the taking of a mirror image of the drive or drives in that computer.
10. The preferred method is to forensically "clone" the computer drive and replace the existing drive with the cloned drive. This preserves the original drive in its current state at the time of removal, while, at the same time, providing the user with a duplicate operational drive to use going forward.
11. An alternate method is to obtain an electronic disk-to-disk image of the drive or drives in the subject computer and leave the original drive in place. This method risks further destruction of the data on the original drive.
12. I then leave the premises to conduct the analysis of the disk images so as to not interfere with the use of the computer in question. If the customer prefers for security purposes, I can conduct my work on-site in a secure and unobtrusive fashion.

