ORIGINAL

IN THE SUPREME COURT OF OHIO

Original action in mandamus; case no. 2010-2029

STATE ex rel. DATA TRACE INFORMATION SERVICES, LLC, et al.,

Relators,

-v-

RECORDER OF CUYAHOGA COUNTY, OHIO,

Respondent.

Relator Stutzman's Response To Motion To Dismiss Him As A Relator For Lack of Standing

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Statement of Facts & Procedural Posture

1. The parties.

The relators are Michael Stutzman and his employer, Data Trace Information Services, LLC; and Michael Carsella and his employer, Property Insight LLC. The sole respondent is the Cuyahoga County Recorder. Each company stores and indexes electronic images of public records that county recorders keep, such as deeds and mortgages, for use by title insurers.

This memorandum is on behalf of relator Stutzman.

2. The complaint by relator Stutzman.

The complaint alleges that, on October 5, 2010, relator Michael Stutzman asked the respondent county recorder to provide electronic copies of certain public records that the respondent keeps in electronic form. Stutzman made the request in writing, a copy of which accompanies the complaint in this suit as Exhibit 1.[1]

Stutzman is relator Data Trace's operations manager. Stutzman earns his living in part by ensuring that Data Trace's collection of copies of records filed with the county recorder is accurate.[2] He made his request "to facilitate [his] performance of his responsibilities and duties as Data Trace's operations

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[1] Complaint, ¶s 6, 7.

[2] *See* Complaint, ¶s 7, 29.

manager."[3]

Stutzman and Data Trace base their claims in this suit on Stutzman's request, Exhibit 1 to the complaint.

Argument

1. Any person acting on another's behalf may seek public records and sue to enforce the request.

The Public Records Act mandates that "any person" has the right to inspect and receive copies of public records. R.C. 149.43(B)(1).

This Court has ruled that "any person" means "any person, regardless of purpose" so that "a person seeking public records is not required to establish a proper purpose or *any* purpose." State ex rel. Fant v. Enright, 66 Ohio St.3d 186, 188, 1993-Ohio-188, 610 N.E.2d 997, 998 (emphasis added).

Applying that ruling, this Court has decided that a person requesting records on behalf of someone else has standing to enforce the request. E.g., State ex rel. Steckman v. Jackson, 70 Ohio St.3d 420, 427, 437, 639 N.E.2d 83, 89, 95-96 (1994).

In Steckman, private investigator William Steckman asked the Columbus police chief to provide copies of records of the police department's investigation of a murder. Acting on behalf of the man charged with the murder, Steckman sued

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[3] Complaint, ¶ 11.

under the Public Records Act to enforce his request.[4]

The Franklin County court of appeals enforced Steckman's request, ordering the police chief to produce the records even though Steckman was "a designee" for the criminal defendant.[5] Although this Court decided that the requested records weren't public, the Court ruled that Steckman had standing to enforce his request even though he was acting on behalf of someone else.[6]

The Court explained that "*anyone*," whether "designee" or "nondesignee," has a right to obtain public records under the Public Records Act.[7] The Court ruled that "if the records sought are, in fact, public and not subject to any exception as to their release, then whether or not a person is acting as a designee is not an issue."[8]

Since this Court decided Steckman over 16 years ago, this Court always has allowed relators to proceed with suits to enforce the Public Records Act where the

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4 *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 422, 639 N.E.2d 83, 86 (1994).

5 *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 422, 639 N.E.2d 83, 86 (1994).

6 *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 427, 437, 639 N.E.2d 83, 89, 95 (1994).

7 *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 427, 639 N.E.2d 83, 89 (1994) (emphasis in original).

8 *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 427, 639 N.E.2d 83, 89 (1994) (emphasis in original).

relators had asked for the records as agents for someone else and then sued to enforce those requests.

In State ex rel. District 1199, Health Care and Social Service Union v. Lawrence Cty Gen'l Hosp., the president and the secretary-treasurer of a labor union asked a county hospital for access to public records. They sued, along with the union, to enforce their request. This Court unanimously ordered the hospital to produce the records. 83 Ohio St.3d 351, 352, 354, 1998-Ohio-49, 699 N.E.2d 1281, 1282, 1283-1284.

In Gilbert v. Summit County the sole relator was an attorney representing a former Summit County employee in a federal civil suit against the county. The attorney asked for the records to aid in representing his client in the federal suit. In a unanimous decision, this Court enforced the attorney's request. 104 Ohio St.3d 660, 2004-Ohio-7108, 821 N.E.2d 564.

In State ex rel. Russell v. Thomas, the sewage collection supervisor and an assistant operator sued their employer – a regional wastewater treatment authority – alleging that it had refused their request to inspect and copy the plant operational logs, safety equipment purchase records, and other public records. They also sought an order requiring the authority to reduce its fee for copies of public records from $1 per page to 2-cents per page.[9] They said that they made

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[9] 85 Ohio St.3d 83, 83, 1999-Ohio-435, 706 N.E.2d 1251, 1252

those requests "to properly perform their job duties."[10]

Under this court's mediation program, the respondent authority agreed to provide the requested records and agreed to reduce the fees for copies, but the authority declined to pay the relators' attorneys' fees. This Court unanimously ordered the authority to pay those fees even though the relators were acting in their capacities as employees performing their jobs.[11]

In State ex rel. Beacon Journal Publishing Co. v. Maurer, an assistant editor of a newspaper wrote a letter to the Wayne County sheriff asking for copies of public records for use in her editorial duties for the newspaper. When the sheriff refused to release an unredacted version, both the assistant editor and her employer, the Beacon Journal Publishing Company, sued. This Court enforced the request. Although two justices dissented on the merits, no justice expressed any doubt that the assistant editor had standing to sue. 91 Ohio St.3d 54, 2001-Ohio-282, 741 N.E.2d 511.

In a variety of other cases, this Court has allowed relators to proceed without regard to whether they were agents of someone else or a combination of agents and principals.[12]

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[10] 85 Ohio St.3d 83, 83, 1999-Ohio-435, 706 N.E.2d 1251, 1252

[11] 85 Ohio St.3d 83, 86, 1999-Ohio-435, 706 N.E.2d 1251, 1254.

[12] *E.g.*, *State ex rel. Seballos v. School Emp. Retirement Sys.*, 70 Ohio St.3d 667, 668-669, 1994-Ohio-80, 640 N.E.2d 829, 830-831; *State ex rel. Montgomery*

2. Relator Stutzman has standing as an aggrieved party to enforce his own request.

Here, the complaint avers that Stutzman personally asked the county recorder to comply with the Public Records Act; that he did so to try to satisfy his obligation to his employer to maintain accurate copies of the recorder's records; and that he is aggrieved because the county recorder's failure to comply with his request impedes his ability to fully do his job.[13] Citing those reasons, the complaint specifically alleges that Stutzman is "aggrieved" under the Public Records Act. (Complaint, ¶ 29.)

Stutzman, therefore, has standing under the Public Records Act to make and enforce his request, Exhibit 1 to the Complaint.

The county recorder argues that the recorder will be "forced to seek expensive and time-consuming discovery" if Stutzman remains as a relator, but beyond that simple platitude the recorder offers no reason for that to be true.

First, the recorder's answer to the complaint admits receiving the request upon which Stutzman is suing. (Answer ¶ 6.) And, since this Court has ruled that Stutzman's purpose in making the request cannot affect whether the recorder must comply with it, the recorder appears to have no bona fide ground for

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Cty Pub. Defender v. Siroki, 108 Ohio St.3d 207, 2006-Ohio-662, 842 N.E.2d 508; *State ex rel. Beacon Journal Pub. Co. v. City of Akron*, 104 Ohio St.3d 399, 402, 411, 2004-Ohio-6557, 819 N.E.2d 1087, 1090-1091, 1099 ¶s 11-15, 64.

[13] *See* Complaint, ¶s 7, 11, 29.

conducting discovery at all, much less "expensive and time-consuming" discovery.

Moreover, the recorder does not claim that the recorder would seek no discovery from Stutzman if Stutzman were not a relator.

Stutzman has not retained separate counsel from the other relators. All share the same lawyers, whose services in this action effectively would be the same regardless of whether Stutzman remains as a relator. Nor has Stutzman's presence as a relator caused any increase in court costs. And the relators will not seek four sets of statutory damages; the maximum exposure to statutory damages would be one award of per-diem damages for the request that is Exhibit 1 to the complaint and one award of per-diem damages for the separate request that is Exhibit 2 to the complaint.

The *only* way that Stutzman's presence as a relator can make *any* notable difference in either the volume of proceedings or the amount of attorneys fees is by the recorder pursuing the very sort of litigation tactic that the recorder is pursuing here: moving invalidly to dismiss Stutzman or otherwise invalidly making an issue of Stutzman's presence as a relator. That, and only that – the recorder's voluntary choice in strategy – can multiply the proceedings or increase attorneys' fees due to Stutzman being a relator.

If the recorder would have allowed this action to proceed as these cases most often due – as the cases described above did – then Stutzman's presence as a

relator would have zero impact on the number of proceedings and on the volume of legal services rendered and consequent attorney fees.

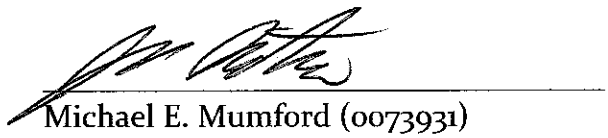
The recorder also argues that Stutzman can have no interest in enforcing his request distinct from Data Trace's. Yet Stutzman's interest in excelling personally as Data Trace's operations manager gives him a personal stake in seeing his request succeed that is somewhat different from Data Trace's more generalized interest in ensuring that it has accurate electronic copies of public records. Since Stutzman needs no "personal" stake to have standing, however, he is "aggrieved" regardless of how his interests dovetail with those of Data Trace.

Conclusion

When the county recorder ignored Stutzman's request, he became aggrieved. Like everyone else, he is entitled to seek public records and to enforce his request for any purpose. That he was performing services for Data Trace can't change that.

For all of the forgoing reasons, the Court should deny the county recorder's motion to dismiss Stutzman as a relator.

Respectfully submitted,



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Certificate of Service

Relator Stutzman's Response to Motion to Dismiss Him as a Relator For Lack of Standing was sent VIA UPS OVERNIGHT DELIVERY on this 31st day of December, 2010 to:

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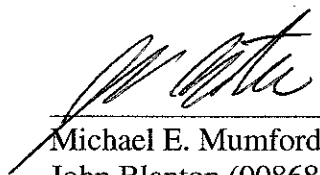

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