

**IN THE SUPREME COURT OF OHIO**

**original action in mandamus – case no. 10-2029**

**STATE ex rel.**

**DATA TRACE INFORMATION SERVICES, LLC, et al.,**

**Relators,**

**-v-**

**RECORDER OF CUYAHOGA COUNTY, OHIO,**

**Respondent.**

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**Relators' amended complaint**

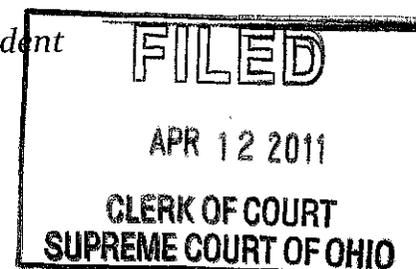
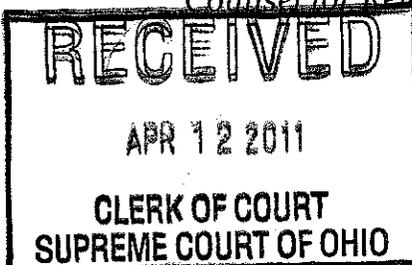
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*Counsel for Respondent*



## The relators

1. Relator Data Trace Information Services, LLC is a limited liability company that maintains an office in Cleveland, Ohio, at 1500 W.3<sup>rd</sup> Street, Suite 501. Data Trace Information Services is organized under the laws of Delaware and registered with the Ohio Secretary of State to do business in Ohio.
2. Relator Property Insight, LLC, is a limited liability company that maintains an office in Cleveland, Ohio, at 1367 E.6<sup>th</sup> Street, Suite 500. It is organized under the laws of California and registered with the Ohio Secretary of State to do business in Ohio.
3. The relator companies – Data Trace and Property Insight – are independent of each other; neither owns or controls the other, and the relator companies do not share the same owner.
4. Among other functions, each relator company independently:
  - a. stores and indexes electronic images of public records that county recorders have recorded and keep;
  - b. maintains electronic databases of information gleaned from those electronic images of public records that county recorders have recorded and keep;
  - c. allows title insurers to use the electronic images and electronic databases to assist title insurers in evaluating the quality of title of real estate and encumbrances on real estate;

d. allows title insurers to use the electronic images and electronic databases to assist persons who may buy real estate, fund the purchase of real estate by others, or guarantee the payment of the purchase price of real estate. Those persons use the information from relators to evaluate the quality of title of real estate and encumbrances on real estate.

5. The relator companies do not sell the electronic images of recorded instruments in bulk.

6. Relator Michael Stutzman personally made one of the requests upon which this suit is based. A copy of that request, dated October 5, is attached as **Exhibit 1**.

7. Relator Data Trace employs relator Stutzman as operations manager. His responsibilities include ensuring that Data Trace acquires accurate copies of such public records stored by the Cuyahoga County Recorder that help people to evaluate the quality of title to real estate in Cuyahoga County and to evaluate the quality and existence of encumbrances on that real estate. Deeds to real estate typify those kinds of records. Stutzman performs his responsibilities in Data Trace's Cleveland, Ohio office as well as in Data Trace's Indianapolis office and other offices.

8. Relator Michael Carsella personally made the other request upon which this suit is based. A copy of that request is attached as **Exhibit 2**.

9. Relator Property Insight employs Carsella as Vice President of Midwest Plant Operations. His responsibilities and duties include ensuring that Property Insight acquires accurate copies of such public records stored by the Cuyahoga County Recorder that help people to evaluate the quality of title to real estate in Cuyahoga County and to evaluate the quality and existence of encumbrances on that real estate. Carsella performs his responsibilities in Property Insight's Cleveland, Ohio office as well as in Property Insight's Illinois office.

**The respondent**

10. Respondent Recorder of Cuyahoga County, Ohio is a public office. It records and indexes instruments that recite or manifest interests in real property that lies within Cuyahoga County as well as other instruments.

11. Among such recorded instruments are deeds to real property that lies within the county; mortgages on real property that lies within the county and satisfactions of those mortgages; leases of real property that lies within the county; Uniform Commercial Code financing statements where real property within the county secures the underlying transaction; certain kinds of liens on real property within the county and releases of those liens.

12. A chief purpose of recording and indexing such instruments is to make copies of the recorded instruments and the information they contain available for public inspection and copying.

13. Cuyahoga County's new charter form of government took effect in January, 2011. Under the charter, the Fiscal Officer assumed the powers and duties of the Recorder of Cuyahoga County. The county has formed a "department of the recorder," which executes duties that the Recorder of Cuyahoga County had.

14. From July, 2008 through January 14, 2011, Lillian Greene held the office of Recorder of Cuyahoga County.

**Respondent keeps electronic images on compact disc of its recorded instruments**

15. Respondent records instruments that individuals or businesses tender for recording. Individuals or businesses tender those instruments as paper documents.

16. Since at least 1999, if respondent determined that the tendered instrument qualifies to be recorded, the respondent's personnel scan the paper instrument electronically to create an electronic image of the instrument. Respondent returns the paper instrument to the person who tendered it, and respondent keeps the electronic image of the instrument in respondent's computer system. Respondent also collects a filing fee from the person who tendered the instrument.

17. When recording the instrument, respondent assigns a unique Automated File Number ("AFN") to its copy of the instrument. Since at least the

year 2002, the AFN for most recorded instruments showed the date upon which respondent recorded that instrument and the number of instruments that respondent had recorded that day as of recording that specific instrument. The AFN appears on the respondent's electronic image of the recorded instruments.

18. Since at least May, 1999, the Recorder has downloaded onto a compact disc electronic copies of all instruments that respondent recorded on a particular day. Respondent calls that a "master CD" and has one master CD for each day's worth of instruments recorded since at least May, 1999.

19. Respondent keeps each day's master CD as a "backup" to ensure that respondent has an electronic duplicate of each day's recorded instruments.

20. The Recorder has purchased blank CDs for use in the course of its routine business at a rate of \$31.81 for 100 discs.

#### **Respondent Recorder's policies and practices between 1999 and February 1, 2011**

21. For over 10 years, beginning in late May, 1999, the Recorder duplicated the contents of its master CDs onto blank compact discs, which it provided for \$50 apiece. Relator Data Trace regularly paid the \$50 fee for those CDs, as did relator Property Insight and relators' predecessor or affiliated companies. Respondent recorded electronic copies of its recorded instruments onto multiple CDs simultaneously, recording copies of the same images onto at least three CDs at the same time.

22. In 2008 or 2009, the respondent adopted a written policy governing requested copies of publicly-available records kept by respondent. A copy of that policy is attached as **Exhibit 3**.

23. Section 3 of the policy said that the “charge for downloaded computer files to a compact disc is \$1.00 per disc.” Section 3 in its entirety said:

**Section 3. Costs for Public Records.**

Those seeking public records will be charged only the statutory cost of making copies.

**Section 3.1.** The charge for paper copies of recorded documents is \$2.00 per page.

**Section 3.2.** The charge for copies of administrative files and documents is \$.05 per page.

**Section 3.3.** The charge for downloaded computer files to a compact disc is \$1.00 per disc.

**Section 3.4.** There is no charge for documents e-mailed.

24. In the spring of 2010, while the policy shown on Exhibit 3 was in effect, the Recorder advised relators that the Recorder no longer would provide downloaded electronic copies of recorded instruments onto CDs. The Recorder

said that it would provide only paper copies of recorded instruments at \$2 for each paper copy of each page.

25. After Data Trace and Property Insight sued the Recorder, the Recorder expressed willingness to provide electronic copies of its recorded instruments on CD, but only in exchange for a fee of \$2.00 for each digital image of each page of each recorded instrument downloaded onto each CD. Despite that offer, the Recorder has concluded that Ohio law does not *require* respondent to copy its electronically-stored recorded instruments onto a CD for the relators or for any other member of the public.

26. On January 5, 2011, while holding the office of Recorder, Greene testified in this action that the policy shown as Exhibit 3 applied only to “public records” under Ohio’s Public Records Act, R.C. 149.43. She also testified that she had concluded that respondent’s recorded instruments, such as deeds, are not “public records” under Ohio’s Public Records Act, R.C. 149.43.

27. Greene also testified that respondent’s policy of charging \$1 for downloading computer files to a CD did not apply to respondent’s recorded instruments because they are not “public records” under R.C. 149.43.

28. After deposing Greene, relators deposed respondent’s chief of staff, John Kandah. He testified that the Recorder’s policy (“charge for downloaded computer files to a compact disc is \$1.00 per disc”) *did* apply to recorded

instruments. But he said that the fee was supposed to be \$1 per CD *plus* \$2 for each page of each instrument that was downloaded onto the CD.

29. In January, 2011 – less than one week after relators deposed Greene – respondent deleted the \$1 fee for downloading records onto a CD from its public records policy and rewrote section 3. Respondent replaced the substance of section 3 with the following:

**Section 3. Costs for Public Records**

Those seeking public records will be charged only the statutory cost of making copies.

**Section 3.1** – All Public Records are available for inspection Monday – Friday from 8:30 A.M. until 4:30 P.M. Copies of such records are available upon request. The cost for copies is \$2.00 per page for recorded documents (\$17.28 for copies of sub-plats and condos) and \$.05 per page for all administrative or non-recorded documents.

We may require payment of these fees prior to processing your request.

**Section 3.2** – Will permit prompt inspection of public records and provide copies of such records within a reasonable amount of time. If the requested records need to be researched, retrieved, assembled or reviewed prior to release, we will let you know approximately how long it will take.

**Section 3.3** – Public Records Requests pertain to any documents that document the organization, functions, policies, decisions, procedures and operations of the office, subject to certain exemptions under state and federal law.

**Section 3.4** – Public Records Requests should be directed to the Cuyahoga County Recorder at 216-443-8194, or by visiting Room 211 (Administrative Offices) at the Cuyahoga County Administration Building, 1219 Ontario Street, with the request.

**Section 3.5** – A copy of the complete Public Records Policy for this office can be obtained from the Records Manager in the Recorder's Administrative Offices.

A copy of the public records policy as changed after relators deposed Lillian Greene is **Exhibit 4**.

30. Respondent claims that it chose to stop providing the CDs and then scuttled its \$1 per CD policy during this suit because the Recorder has interpreted Ohio law as not allowing it to download digital copies of recorded instruments onto CD and not allowing it to charge any fee other than \$2 for each page. That argument is a pretext.

31. A high-ranking official in the Recorder's office explained to one of the relators why the Recorder stopped its 11-year practice of providing relators with the CDs for \$50 per CD. The reason: resentment that, while Recorder's personnel were having to take furlough days without pay because of the Recorder's financial difficulties, the relator companies were obtaining digital copies of recorded instruments without having to pay the paper-copy fee of \$2 per page and then using those digital copies to "get rich" – to generate revenue for themselves.

**Oct. 5, 2010 requests of (1) relators Data Trace & Michael Stutzman and (2) Property Insight and Michael Carsella**

32. Among other relief, this action seeks to compel the Recorder to comply with relators' written requests of Tuesday, October 5, 2010, copies of which are **Exhibits 1 and 2**. The Recorder received those requests – one from relators Stutzman and Data Trace and one from relators Property Insight and Carsella – on or before October 7, 2010.

33. Stutzman signed the request shown as Exhibit 1, and Carsella signed the request shown as Exhibit 2.

34. Each request asked the Recorder to copy electronically-stored recorded instruments onto a compact disc for that requester. Each requester asked for electronic copies of instruments recorded in July and August, 2010. Alternatively, each request said: "if it would be less work for you," the Recorder could provide electronic copies of only the first 100 documents publicly recorded each day of July and August, 2010.

35. Stutzman made his request to facilitate his performance of his responsibilities as Data Trace's Operations Manager, and thus made the request on behalf of Data Trace as well as on his own behalf.

36. Carsella made his request to facilitate his performance of his responsibilities as Vice President of Midwest Plant Operations, and thus made the request on behalf of Property Insight as well as on his own behalf.

37. Each request also demanded that respondent Recorder “immediately amend its fee policy to comply with Ohio law,” and thus reduce the fee to an “at cost” maximum. See R.C. 149.43(B)(1).

**Count 1: Writ compelling the Recorder to provide the requested electronic copies on compact disc**

38. The October 5 requests suggested that the Recorder had decided, as a matter of policy, provide electronic copies of recorded instruments on CD to all requesters if the requesters paid a fee of \$2 for each imaged page of each instrument. In fact, that conclusion was incorrect.

39. The Recorder actually had decided that Ohio law does not allow or require respondent to provide the public with electronic images of recorded instruments on CD at all – at any fee. After Data Trace and Property Insight sued, the respondent said that it would provide Data Trace and Property Insight with copies of digital images of recorded instruments on CD if each of them paid \$2 for each page.

40. The recorded instruments that relators requested are public records under R.C. 149.43.

41. Respondent stores the requested recorded instruments electronically on compact discs and otherwise in electronic form in its computer system. As an integral part of its normal operations, the Recorder readily can copy the requested electronically-stored public records onto the electronic medium of a CD simply by copying the Recorder's master CD.

42. Therefore, relators and other members of the public have a clear legal right under R.C. 149.43 to receive the requested copies of those public records on the electronic medium of a CD, and respondent has a clear legal duty to provide the requested copies of those public records on that electronic medium.

43. Mandamus is the appropriate remedy to compel compliance with the Public Records Act, R.C. 149.43, and to enforce the public duties that relators seek to enforce in count 1.

**Count 2: Writ compelling the Recorder to amend its fee practice, policy**

44. Applying the asserted fee of \$2 per imaged page, respondent now seeks to charge Data Trace a fee exceeding \$130,000 for one CD of downloaded copies of the requested electronically-stored instruments – those recorded in July and August, 2010. And respondent seeks to charge Property Insight a fee exceeding \$130,000 for a separate, simultaneously-recorded CD of copies of the same instruments.

45. Respondent's actual "cost" of making the requested electronic copies of the electronically-stored recorded instruments is far below \$2.00 per electronically-copied page of those records, and Ohio law neither requires nor authorizes the Recorder to exact a fee as high as \$2.00 per electronically-copied electronic page of those records.

46. Respondent, therefore, has a clear legal duty to amend its policy and practice to conform with Ohio law, which limits the fee to the "cost" of electronically copying those electronically-stored records. *See* R.C. 149.43(B)(1).

47. Relators and all other members of the public have a clear legal right to receive electronic copies of recorded instruments at a fee that does not exceed respondent's "cost" of electronically copying those public records (exclusive of employee time). *See* R.C. 149.43(B)(1).

48. Mandamus is the appropriate remedy to compel respondent to comply with the fee limitations of the Public Records Act, R.C. 149.43, and to enforce the public duties that relators seek to enforce through count 2.

**Count 3: Restoring the written policy of \$1 for each CD of electronic copies of recorded instruments**

49. The policy that respondent adopted in January, 2011, after relators deposed Lillian Greene, is a sham. Respondent hastily adopted that new

policy to try to bolster respondent's ability to prevail in this action and to try to undermine relators' ability to prevail.

50. The respondent's *real* policy is the one shown in Exhibit 3. Respondent has given that policy inconsistent, distorted, and absurd meanings to avoid having to comply with it in this case.

51. On its face, respondent's written policy shown in Exhibit 3 allowed the public to receive electronic copies of electronically-stored recorded instruments on CD, and the fee for providing those copies on CD was \$1 per CD with no per-page fee for the downloaded copies.

52. The amount of the \$1 fee for downloading electronically-stored instruments onto a CD presumably complied with Ohio law by approximating the Recorder's actual costs of downloading those digital records. Respondent has a clear legal duty to restore that policy – allowing the public to receive downloaded electronic copies of recorded instruments on CD for \$1 per CD and with no per-page fee for those downloaded copies.

53. Relators and the general public, therefore, have a clear legal right to require the Recorder to restore that policy.

54. Mandamus is the appropriate remedy to compel respondent to restore the policy shown in Exhibit 3 so as to comply with the Public Records Act, R.C. 149.43.

### **Relators are “aggrieved” persons**

55. The respondent’s non-compliance with Carsella’s October 5 request adversely affects his ability to satisfy fully his responsibilities as Property Insight’s Vice President of Midwest Plant Operations. Relator Carsella therefore is an “aggrieved” person under R.C. 149.43(C)(1), as is Property Insight.

56. The respondent’s non-compliance with Stutzman’s October 5 request adversely affects his ability to satisfy fully his responsibilities as Data Trace’s operations manager. Relator Stutzman therefore is an “aggrieved” person under R.C. 149.43(C)(1), as is Data Trace.

### **Other facts – relevant to relators’ prayer for attorneys’ fees**

57. Relators incorporate all averments made in all preceding paragraphs of this amended complaint.

58. During the 19 days that passed after respondent received relators’ requests of October 5, 2010, respondent did not acknowledge relators’ requests or advise relators whether respondent would comply or refuse to comply with either of relators’ requests.

59. The relator companies then sued respondent in the Ohio Supreme Court, Case No. 10-1823, filed October 25, 2010. The relators sought the same relief that the original complaint in this suit sought, including attorneys' fees.

60. The respondent acknowledged relators' October 5 requests for the first time on November 16, 2010 – more than two weeks after the respondent was served with the summons in Case No. 10-1823.

61. Two days later, on Thursday, November 18, 2010, the respondent moved to dismiss Case No. 10-1823, arguing that the relator companies were not allowed to litigate in Ohio courts because they had not registered with the Ohio Secretary of State to do business in Ohio.

62. Before filing that motion to dismiss, the Recorder's counsel communicated with relators' counsel by letter, phone, and e-mail. In those communications the Recorder's counsel did not object to relators seeking relief in an Ohio court, or mention anything about registering with the Secretary of State.

63. Shortly after receiving respondent's November 18 motion to dismiss, relators registered with Ohio's Secretary of State. Then, on Wednesday, November 24, 2010, relators filed a notice of voluntary dismissal without prejudice. Upon filing that notice, relators filed this action – also on November 24. In all material ways, the original complaint in this action sought the same relief that relators prayed for in Case No. 10-1823.

64. The notice of voluntary dismissal of Case No. 10-1823 did not take effect immediately or automatically. The Ohio Supreme Court granted the voluntary dismissal without prejudice six days after relators filed this action.

65. For purposes of adjudicating an award of attorneys' fees, the Court should treat the two suits as effectively one continuous action to compel respondent to comply with the relators' written requests of October 5, 2010.

WHEREFORE, relators Data Trace and Michael Stutzman pray for the following relief:

1. an alternative writ of mandamus that establishes a schedule for submitting evidence and briefs on the merits;
2. a peremptory writ of mandamus that compels the respondent to provide to these relators the requested copies of recorded instruments on one or two compact discs, or on such other electronic medium that is acceptable to all parties;
3. a peremptory writ of mandamus that compels the respondent to amend its policy and practice to allow for copying electronically-stored recorded instruments onto such electronic media as CDs, and to provide the requested electronic copies to relators and to all other members of the public at a fee no greater than Ohio law allows – at “cost” exclusive of employee time.

4. a peremptory writ compelling the respondent to restore the policy shown in Exhibit 3 to this amended complaint and to apply section 3.3 of that policy to the requested records, limiting the fee charged to relators and to all other members of the public to \$1 per CD with no per-page fee;

5. a peremptory writ of mandamus that awards court costs and attorneys' fees and statutory damages as allowed or required under R.C. 149.43;

6. such other relief as permitted by law;

AND WHEREFORE, relators Property Insight and Michael Carsella pray for:

1. an alternative writ of mandamus that establishes a schedule for submitting evidence and briefs on the merits;

2. a peremptory writ of mandamus that compels the respondent to provide to these relators the requested copies of recorded instruments on one or two compact discs or on such other electronic medium that is acceptable to all parties;

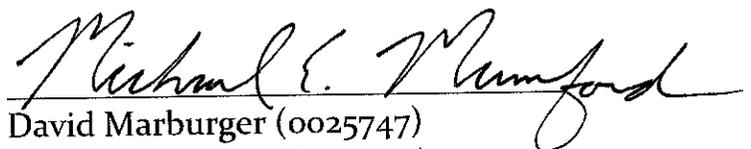
3. a peremptory writ of mandamus that compels the respondent to amend its policy and practice to allow for copying electronically-stored recorded instruments onto such electronic media as CDs, and to provide the requested

electronic copies to relators and to all other members of the public at a fee no greater than Ohio law allows – at “cost” exclusive of employee time;

4. a peremptory writ of mandamus that compels the respondent to restore the policy shown in Exhibit 3 to this amended complaint and to apply section 3.3 of that policy to the requested records, limiting the fee charged to relators and to all other members of the public to \$1 per CD with no per-page fee;

5. a peremptory writ of mandamus that awards court costs and attorneys’ fees and statutory damages as allowed or required under R.C. 149.43;

6. such other relief as permitted by law.



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John Blanton (0086836)

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Attorneys for Relators

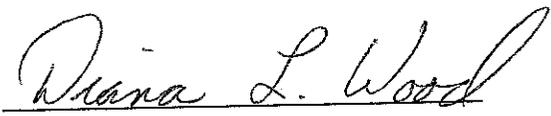
VERIFICATION

I, Michael Carsella, being duly sworn, state as follows based upon my personal knowledge. I am Vice President/Midwest Plant Operations Manager for Property Insight, LLC, a party to this action. I have read the foregoing amended complaint for alternative and peremptory writs of mandamus and have personal knowledge of many of the averments of fact in the amended complaint; otherwise some averments of fact are consistent with my understanding derived from documentary information that has been sworn, or which I learned as information known to the organization that employs me. To the best of my knowledge, the averments of fact in the complaint are true.

I declare under penalty of perjury that the foregoing is true and correct.

  
Michael Carsella

SWORN TO AND SUBSCRIBED to before me on this 7<sup>th</sup> day of February 2011.

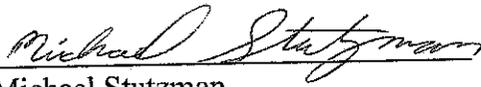
  
Notary Public



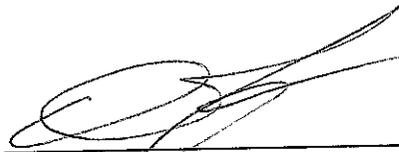
VERIFICATION

I, Michael Stutzman, being duly sworn, state as follows based upon my personal knowledge. I am the Operations Manager for Data Trace Information Services, LLC. I have read the foregoing amended complaint for alternative and peremptory writs of mandamus. I have personal knowledge of many of the averments of fact in the amended complaint; otherwise some averments of fact are consistent with my understanding derived from documentary information that has been sworn, or which I learned as information known to the organization that employs me. To the best of my knowledge, the averments of fact in the complaint are true.

I declare under penalty of perjury that the foregoing is true and correct.

  
Michael Stutzman

SWORN TO AND SUBSCRIBED to before me on this 7 day of February 2011.

  
Notary Public

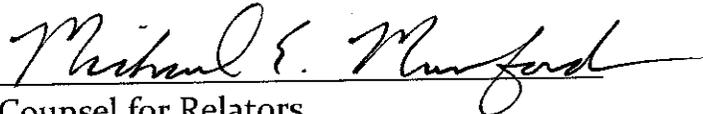
*[Faint notary seal text]*

Certificate of Service

The foregoing *Relators'* amended complaint accompanying their motion to file amended complaint has been hand delivered on this 12<sup>th</sup> day of April, 2011 to:

David T. Movius, Esq.  
McDonald Hopkins LLC  
600 Superior Avenue, East - Suite 2100  
Cleveland, OH 44114

*Counsel to Respondent*

  
Counsel for Relators



*First American  
Data Tree*



October 5, 2010

**VIA FEDERAL EXPRESS**

Lillian J. Greene, Cuyahoga County Recorder  
Cuyahoga County Recorder's Office  
1219 Ontario Street  
Cleveland, Ohio 44113

*Re: Public Records Act Request*

Dear Ms. Greene:

On behalf of First American Data Tree LLC ("Data Tree") and Data Trace Information Services LLC ("Data Trace"), I am writing to request, under the Ohio Open Records Act, R.C. 149.43, electronic copies of all documents publicly recorded in the Cuyahoga County Recorder's Office in the months of July and August 2010. I understand that these documents are currently maintained by your office in electronic form. Data Tree and Data Trace do not object to you not producing military discharges recorded during those two months.

Alternatively, if it would be less work for you to provide us with electronic copies of only the first 100 documents publicly recorded on each day of July and August, 2010, we are willing to accept electronic copies of only those documents in lieu of electronic copies of every document publicly recorded in July and August, 2010.

Under R.C. 149.43(B)(6), please provide copies in electronic form on a compact disc (CD). Please produce the electronic copies in a format that does not modify the original document, and without any type of watermark image.

Your office has a policy or practice of imposing a charge for all copies of recorded documents, whether imaged or paper, of \$2.00 per page or image. This policy is contrary to Ohio law. Ohio Revised Code § 317.32(I) provides that only *photocopies*, i.e., *paper* copies of recorded documents, are subject to the \$2.00 per page copy fee. Conversely, electronic images and other *nonpaper* copies of recorded documents are subject to the general "at cost" standard under R.C. 149.43(B)(1).

Before adopting its current non-conforming policy, your office had provided electronic copies each day. Your office provided them on CD for a copying charge of \$50 per CD. Although that fee exceeds the maximum allowed under the Public Records Act, Data Tree and Data Trace are willing to resume paying it.

Lillian J. Greene, Cuyahoga County Recorder  
October 5, 2010  
Page 2

If your office seeks to impose a higher fee, we will insist that your office charge no more than the actual cost to your office of producing the requested electronic images. Accordingly, please consider this letter a formal demand that your office immediately amend its public record fee policy and practice to comply with Ohio law.

Finally, if you deny any part of this request, under R.C. 149.43(B)(3), please provide me with a written explanation, including legal authority, justifying your denial.

Sincerely,



Michael Stutzman

Operations Manager

7340 Shadeland Station Suite #125

Indianapolis, Indiana 46256

Telephone (317) 863-2453 Cell (216) 780-4949

Fax (317) 598-8521

Email [mstutzman@edatatrace.com](mailto:mstutzman@edatatrace.com)



505 East North Avenue; Suite 200 • Carol Stream, IL 60188 • Telephone 630-510-4190 • Facsimile 630-488-4896

October 5, 2010

**VIA FEDERAL EXPRESS**

Lillian J. Greene, Cuyahoga County Recorder  
Cuyahoga County Recorder's Office  
1219 Ontario Street  
Cleveland, Ohio 44113

Re: *Public Records Act Request*

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Your office has a policy or practice of imposing a charge for all copies of recorded documents, whether imaged or paper, of \$2.00 per page or image. This policy is contrary to Ohio law. Ohio Revised Code § 317.32(l) provides that only *photocopies*, i.e., *paper* copies of recorded documents, are subject to the \$2.00 per page copy fee. Conversely, electronic images and other *nonpaper* copies of recorded documents are subject to the general "at cost" standard under R.C. 149.43(B)(1).

Before adopting its current non-conforming policy, your office had provided electronic copies each day. Your office provided them on CD for a copying charge of \$50 per CD. Although that

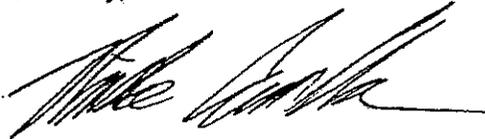
Lillian J. Greene, Cuyahoga County Recorder  
October 5, 2010  
Page 2

fee exceeds the maximum allowed under the Public Records Act, Property Insight is willing to resume paying it.

If your office seeks to impose a higher fee, we will insist that your office charge no more than the actual cost to your office of producing the requested electronic images. Accordingly, please consider this letter a formal demand that your office immediately amend its public record fee policy and practice to comply with Ohio law.

Finally, if you deny any part of this request, under R.C. 149.43(B)(3), please provide me with a written explanation, including legal authority, justifying your denial.

Sincerely,

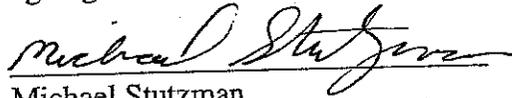


Mike Carsella  
Property Insight  
505 East North Ave.  
Suite 200  
Carol Stream, IL 60188-4848  
(630) 510-4190  
[Mike.Carsella@propertyinsight.biz](mailto:Mike.Carsella@propertyinsight.biz)

VERIFICATION

I, Michael Stutzman, being duly sworn, state as follows based upon my personal knowledge. I am the Operations Manager for Data Trace Information Services, LLC, a party to this action, and am authorized to make this verification for and on its behalf. I have read the foregoing complaint for alternative and peremptory writs of mandamus and have personal knowledge of the averments of fact set forth therein. To the best of my knowledge, the averments of fact in the complaint are true.

I declare under penalty of perjury that the foregoing is true and correct.

  
Michael Stutzman

SWORN TO AND SUBSCRIBED to before me on this 22<sup>d</sup> day of November 2010.

  
Notary Public

503147381.1

DAVID M. MARK, Notary Public  
NOTARY PUBLIC - STATE OF OHIO  
My Commission Has No Expiration Date  
Section 147.03 R. C.



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## PUBLIC RECORDS REQUEST POLICY

OF

### THE CUYAHOGA COUNTY RECORDER'S OFFICE

LILLIAN J. GREENE, RECORDER

#### Introduction:

It is the policy of the Cuyahoga County Recorder's Office that openness leads to a better informed citizenry, which leads to better government and better public policy. It is the policy of the Cuyahoga County Recorder's Office to strictly adhere to the state's Public Records Act. All exemptions to openness are to be construed in their narrowest sense and any denial of public records in response to a valid request must be accompanied by an explanation, including legal authority, as outlined in the Ohio Revised Code. If the request is in writing, the explanation must also be in writing.

#### **Section 1. Public records**

This office, in accordance with the Ohio Revised Code, defines records as including the following: Any document – paper, electronic (including, but not limited to, e-mail), or other format – that is created or received by, or comes under the jurisdiction of a public office that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. All records of the Cuyahoga County Recorder's Office are public unless they are specifically exempt from disclosure under the Ohio Revised Code.

#### **Section 1.1**

It is the policy of the Cuyahoga County Recorder's Office that, as required by Ohio law, records will be organized and maintained so that they are readily available for inspection and copying (See Section 4 for the e-mail record policy). Record retention schedules are to be updated regularly and posted prominently.

## **Section 2. Record requests**

Each request for public records should be evaluated for a response using the following guidelines:

### **Section 2.1**

Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity to allow the public office to identify, retrieve, and review the records. If it is not clear what records are being sought, the records custodian must contact the requester for clarification, and should assist the requestor in revising the request by informing the requestor of the manner in which the office keeps its records.

### **Section 2.2**

The requester does not have to put a records request in writing, and does not have to provide his or her identity or the intended use of the requested public record. It is this office's general policy that this information is not to be requested.

### **Section 2.3**

Public records are to be available for inspection during regular business hours, with the exception of published holidays. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested.

### **Section 2.4**

Each request should be evaluated for an estimated length of time required to gather the records. Routine requests for records should be satisfied immediately if feasible to do so. Routine requests include, but are not limited to, meeting minutes (both in draft and final form), budgets, salary information, forms and applications, personnel rosters, recorded documents, etc. If fewer than 20 pages of copies are requested or if the records are readily available in an electronic format that can be e-mailed or downloaded easily, these should be made as quickly as the equipment allows.

All requests for public records must either be satisfied (see Section 2.4) or be acknowledged in writing by the (public office) within a reasonable time following the office's receipt of the request. If a request is deemed significantly beyond "routine," such as seeking a voluminous number of copies or requiring extensive research, the acknowledgement must include the following:

**Section 2.4a** – An estimated number of business days it will take to satisfy the request.

**Section 2.4b** – An estimated cost if copies are requested.

**Section 2.4c** – Any items within the request that may be exempt from disclosure.

**Section 2.5**

Any denial of public records requested must include an explanation, including legal authority. If portions of a record are public and portions are exempt, the exempt portions are to be redacted and the rest released. If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.

**Section 3. Costs for Public Records**

Those seeking public records will be charged only the statutory cost of making copies.

**Section 3.1** The charge for paper copies of recorded documents is \$2.00 per page.

**Section 3.2** The charge for copies of administrative files and documents is \$.05 per page.

**Section 3.3** The charge for downloaded computer files to a compact disc is \$1.00 per disc.

**Section 3.4** There is no charge for documents e-mailed.

**Section 3.4**

Requesters may ask that documents be mailed to them. They will be charged the actual cost of the postage and mailing supplies.

**Section 4. E-mail**

Documents in electronic mail format are records as defined by the Ohio Revised Code when their content relates to the business of the office. E-mail is to be treated in the same fashion as records in other formats and should follow the same retention schedules.

**Section 4.1** – Records in private e-mail accounts used to conduct public business are subject to disclosure, and all employees or representatives of this office are instructed to retain their e-mails that relate to public business (see Section 1 Public Records) and to copy them to their business e-mail accounts and/or to the office's records custodian.

**Section 4.2** – The records custodian is to treat the e-mails from private accounts as records of the public office, filing them in the appropriate way, retaining them per established schedules and making them available for inspection and copying in accordance with the Public Records Act.

**Section 5. Failure to respond to a public records request**

The Cuyahoga County Recorder's Office recognizes the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, the Cuyahoga County Recorder's Offices' failure to comply with a request may result in a court ordering the Cuyahoga County Recorder's Office to comply with the law and to pay the requester attorney's fees and damages.

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OF

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## Section 3. Costs for Public Records

Those seeking public records will be charged only the statutory cost of making copies.

**Section 3.1** - All Public Records are available for inspection Monday – Friday from 8:30 A.M. until 4:30 P.M. Copies of such records are available upon request. The cost for copies is \$2.00 per page for recorded documents (\$17.28 for copies of sub-plats and condos) and \$.05 per page for all administrative or non-recorded documents. We may require payment of these fees prior to processing your request.

**Section 3.2** - Will permit prompt inspection of public records and provide copies of such records within a reasonable amount of time. If the requested records need to be researched, retrieved, assembled or reviewed prior to release, we will let you know approximately how long it will take.

**Section 3.3** - Public Records Requests pertain to any documents that document the organization, functions, policies, decisions, procedures and operations of the office, subject to certain exemptions under state and federal law.

**Section 3.4** - Public Records Requests should be directed to the Cuyahoga County Recorder at 216-443-8194, or by visiting Room 211 (Administrative Offices) at the Cuyahoga County Administration Building, 1219 Ontario Street, with the request.

**Section 3.5** - A copy of the complete Public Records Policy for this office can be obtained from the Records Manager in the Recorder's Administrative Offices.

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