

ORIGINAL

IN THE SUPREME COURT OF OHIO

Case No. 10-2029

Original Action in Mandamus

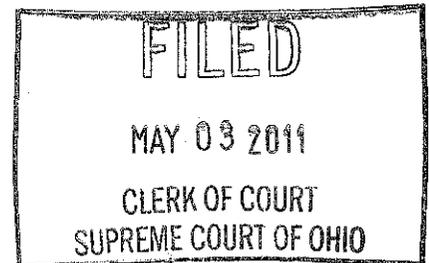
State ex rel. Data Trace Information Services, LLC, et al.,

Relators,

v.

Recorder of Cuyahoga County, Ohio,

Respondent.



**Cuyahoga County Recorder's  
Answer To Amended Complaint**

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In accordance with Rule 10.5 of the Rules of Practice of the Supreme Court of Ohio, respondent Cuyahoga County Recorder ("Recorder") responds to relators' ("Relators") amended complaint as follows:

1. Recorder denies the averments in paragraph 1 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

2. Recorder denies the averments in paragraph 2 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

3. Recorder denies the averments in paragraph 3 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

4. Recorder denies the averments in paragraph 4 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

5. Recorder denies the averments in paragraph 5 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

6. Recorder admits that a letter dated October 5, 2010, is attached as **Exhibit 1** to the amended complaint and otherwise denies the averments in paragraph 6 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

7. Recorder denies the averments in paragraph 7 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

8. Recorder admits that a letter dated October 5, 2010, is attached as **Exhibit 2** to the amended complaint and otherwise denies the averments in paragraph 8 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

9. Recorder denies the averments in paragraph 9 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

10. Recorder admits the averments in paragraph 10 of the amended complaint.

11. Recorder admits the averments in paragraph 11 of the amended complaint.

12. Recorder admits that it makes recorded instruments available to the public for inspection and that it copies those documents upon request and payment of the statutory fee. Recorder denies all other averments in paragraph 12 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

13. Insofar as paragraph 13 of the amended complaint describes the Cuyahoga County Charter, that document speaks for itself and the meanings of its

provisions are legal conclusions to which no response is required. Otherwise, Recorder admits the averments in paragraph 13 of the amended complaint.

14. Recorder admits the averments in paragraph 14 of the amended complaint.

15. Recorder denies the factual averments in the section header on page 4 of the amended complaint.

16. Recorder admits the averments in paragraph 15 of the amended complaint.

17. Paragraph 16 of the amended complaint states a hypothetical, and therefore Recorder denies because it lacks sufficient knowledge or information to form a belief as to truth.

18. Recorder admits that an AFN appears on its digital copies of the recorded instruments, and denies the other averments in paragraph 17 of the amended complaint as vague and ambiguous as to what is meant by "most recorded instruments."

19. Recorder admits that it has created backup copies of digital images of recorded instruments daily by copying them onto a CD and otherwise denies the averments in paragraph 18 of the amended complaint.

20. Recorder admits that it retains a backup of the digital images of each day's recorded instruments.

21. Recorder admits the averments in paragraph 20 of the amended complaint.

22. Recorder admits that it made multiple copies of digital images of recorded instruments onto CDs for Data Trace and Property Insight for \$50 per CD and otherwise denies the averments in paragraph 21 of the amended complaint.

23. Recorder admits the averments in paragraph 22 of the amended complaint.

24. Recorder neither admits nor denies the averments in paragraph 23 of the amended complaint because **Exhibit 3** to the amended complaint speaks for itself.

25. Recorder denies the averments in paragraph 24 of the amended complaint.

26. Recorder admits that it has expressed willingness to copy recorded instruments onto a CD for the statutory fee of \$2.00 per page, as required by R.C. 317.32(I), and otherwise denies the averments in paragraph 25 of the amended complaint.

27. Recorder admits that Lillian Greene held the office of Recorder on January 5, 2011. Recorder neither admits nor denies the other averments in paragraph 26 of the amended complaint because the transcript of Lillian Greene's deposition speaks for itself.

28. Recorder neither admits nor denies the averments in paragraph 27 of the amended complaint because the transcript of Lillian Greene's deposition speaks for itself.

29. Recorder admits Relators deposed Recorder's chief of staff, John Kandah, after they deposed Lillian Greene. Recorder neither admits nor denies the other averments in paragraph 28 of the amended complaint because the transcript of John Kandah's deposition speaks for itself.

30. Recorder admits that it adopted the policy attached as **Exhibit 4** to the amended complaint around January 10, 2011, which speaks for itself, and otherwise denies the averments in paragraph 29 of the amended complaint.

31. Recorder denies the averments in paragraph 30 of the amended complaint.

32. Recorder denies the truth of what an unnamed "high-ranking official" allegedly told Relators, and it denies that an unnamed source actually said those things to Relators because it is without knowledge or information sufficient to form a belief as to the truth of that averment.

33. Recorder admits that it received the letters attached as **Exhibits 1** and **2** to the amended complaint, which letters speak for themselves, and denies the other averments in paragraph 32 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

34. Recorder denies the averments in paragraph 33 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

35. Recorder neither admits nor denies the averments in paragraph 34 of the amended complaint because the letters speak for themselves.

36. Recorder denies the averments in paragraph 35 of the amended complaint.

37. Recorder denies the averments in paragraph 36 of the amended complaint.

38. Recorder neither admits nor denies the averments in paragraph 37 of the amended complaint because the letters speak for themselves.

**As to Relators' "Count One"**

39. Recorder admits that the letters from Data Trace and Property Insight acknowledged that Recorder was willing to provide the requested copies on a CD to Data Trace and Property Insight if they paid the \$2.00 per page statutory fee for those copies. Recorder denies the other averments in paragraph 38 of the amended complaint.

40. Recorder admits that it has expressed willingness to copy recorded instruments onto a CD for the statutory fee of \$2.00 per page, as required by R.C. 317.32(I). Recorder denies the other averments in paragraph 39 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

41. Whether or not recorded instruments are "public records" under R.C. 149.43 is a legal conclusion, which does not require a response. Otherwise, Recorder denies the averments in paragraph 40 of the amended complaint.

42. Recorder admits that it stores digital images of recorded instruments and that it can copy those digital images onto CDs. Recorder denies the other averments in paragraph 41 of the amended complaint.

43. Recorder denies the allegations in paragraph 42 of the amended complaint.

44. Recorder denies the allegations in paragraph 43 of the amended complaint.

**As to Relators' "Count Two"**

45. Recorder admits that Ohio law requires it to charge \$2 per page to copy the documents that Relators have requested onto a CD, that Ohio law requires it to charge Data Trace over \$130,000 for the 104,282 pages of documents that it asked Recorder to copy, and that Ohio law requires it to charge Property Insight over \$130,000 for the 104,282 pages of documents that it separately asked Recorder to copy. Recorder denies the other averments in paragraph 44 of the amended complaint.

46. Recorder denies the averments in paragraph 45 of the amended complaint.

47. Recorder denies the averments in paragraph 46 of the amended complaint.

48. Recorder denies the averments in paragraph 47 of the amended complaint.

49. Recorder denies the averments in paragraph 48 of the amended complaint.

**As to Relators' "Count Three"**

50. Recorder denies the averments in paragraph 49 of the amended complaint.

51. Recorder admits that **Exhibit 3** correctly stated its policy at the time it was in effect, but denies that the policy has the meaning posited by Relators and denies all other averments in paragraph 50 of the amended complaint.

52. **Exhibit 3** speaks for itself, and otherwise Recorder denies that **Exhibit 3** has the meaning posited by Relators.

53. Recorder denies the averments in paragraph 52 of the amended complaint.

54. Recorder denies the averments in paragraph 53 of the amended complaint.

55. Recorder denies the averments in paragraph 54 of the amended complaint.

56. Recorder denies the averments in paragraph 55 of the amended complaint.

57. Recorder denies the averments in paragraph 56 of the amended complaint.

58. In response to paragraph 57 of the amended complaint, Recorder incorporates all responses made in all preceding paragraphs of this answer.

59. Recorder denies the averments in paragraph 58 of the amended complaint.

60. Because the Court's docket for case nos. 10-1823 and 10-2029, and the complaints filed in those cases, speak for themselves, Recorder neither admits nor denies the averments in paragraph 59 of the amended complaint.

61. Recorder denies the averments in paragraph 60 of the amended complaint.

62. Because the Court's docket for case nos. 10-1823 and 10-2029, and the documents filed and entered in those cases, speak for themselves, Recorder neither admits nor denies the averments in paragraph 61 of the amended complaint.

63. Recorder admits that its counsel communicated with Relator's counsel, which communications speak for themselves, and otherwise denies paragraph 62 of the amended complaint.

64. The Court's docket for case nos. 10-1823 and 10-2029, and the documents filed and entered in those cases, speak for themselves. Otherwise, the Recorder denies the averments in paragraph 63 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

65. The Court's docket for case nos. 10-1823 and 10-2029, and the documents filed and entered in those cases, speak for themselves. Otherwise, the Recorder denies the averments in paragraph 64 of the amended complaint because it is without knowledge or information sufficient to form a belief as to their truth.

66. Recorder denies the averments in paragraph 65 of the amended complaint.

**As to Relators' Prayer for Relief**

67. Recorder denies that Relators are entitled to any of the relief requested in their amended complaint.

**Affirmative Defense**

68. Relators' amended complaint fails to state a claim upon which relief can be granted.

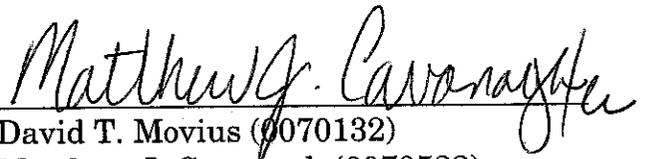
69. Michael Stutzman lacks the standing necessary to maintain this action in mandamus because he is not an "aggrieved" person under R.C. 149.43(C)(1).

70. Michael Carsella lacks the standing necessary to maintain this action in mandamus because he is not an "aggrieved" person under R.C. 149.43(C)(1).

71. Recorder specifically reserves its right to assert any additional defenses which it might discover during the pendency of this action.

**WHEREFORE**, Recorder prays that the Court dismiss Relators' amended complaint and grant such further relief as may be just and proper.

Respectfully submitted,



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**Certificate of Service**

In accordance with Rule 14.2 of the Rules of Practice of the Supreme Court of Ohio, I hereby certify that on May 3, 2011, I served a copy of the foregoing ***Cuyahoga County Recorder's Answer To Amended Complaint*** by e-mail upon the following:

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