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(239) 449-8045 ■ 4949 Tamiami Trail N. Ste107 ■ Naples, Fla. 34103  
An ePublishing marketplace for journalism, ideas & expertise.

Dear Senator Garcia:

I am writing to you to oppose Senate Bill 1220 and to tell you about an exhaustive effort to defend the public's right to know in Naples, my community, by dozens of community leaders, attorneys, other journalists in Southwest Florida, and myself.

I am a journalist and founder of the start-up news outlet, Watchdog City. I have more than 15 years of experience working as a journalist in Florida and using public records to shed light on government.

In January 2014, when I began beat reporting on county government, I had no idea that it would lead to my filing a lawsuit that successfully challenged high public records fees charged to me by the county's elected auditor and accountant — the Collier Clerk of Courts.

Filing a lawsuit was a last resort. I would have much preferred action by law enforcement or another authority to force the Clerk to comply with the public records law.

Prior to publication of my initial stories, the Clerk charged me \$2 for hundreds of pages on 2 CDs and his office told me the charge for electronic records was free or \$1 if it took minimal staff time to burn a CD.

After I published my initial investigative stories, the Clerk charged me \$556 or \$1 per page for electronic public records. Under Florida public records law, if a requestor doesn't pay his or her bill, the agency is no longer required to fulfill subsequent public records requests.

If I didn't pay, I would be effectively shut down.

I won twice in the circuit court – including after an expensive and hard-fought trial demanded by the elected Clerk. Initially, the circuit judge ruled that I owed \$2 for 2 CDs for the electronic records I requested, not the \$556 charged to me by the Clerk.

The Clerk contended that he can charge up to \$1 per page for any document in his possession, electronic or otherwise, including for county government records, not just court documents. He asserted that he's not subject to the fees under the public records law and instead is only governed by the separate Clerk's statute. He demanded a trial where he said I must prove that emails and electronic records are stored in a computer database.

Even after I won at trial, the Clerk continued to break the public records law. He refused to turn over electronic public records I requested last year, which I have publicized on the Internet. Where is law enforcement to help me?

With unlimited taxpayer funds at his disposal to spend on legal fees, the Clerk appealed the trial judge's ruling in my favor. Earlier this month, Florida's Second District Court of Appeal affirmed my win at trial and Collier Circuit Judge Fred Hardt's ruling in my favor that I owed \$1 for electronic public records, not the hundreds of dollars assessed to me by the Clerk.

The Clerk has spent more than \$67,000 in taxpayer money on legal fees fighting me, according to the Naples Daily News, and that amount doesn't include appeal work in 2015. So, the total is likely much higher.

Even though I won at trial, the Clerk continued to threaten me with high public records fees, saying he would come after me for the higher rates – after the fact – if he won the appeal. For example, he said he reserved the right to charge me \$1,538 for electronic public records, \$1 per page, if he won the appeal.

These threats were designed to intimidate me and shut down my access to public records and in turn, my reporting.

Before trial, I was grilled by the Clerk's lawyer in a deposition for more than 3.5 hours. I was asked invasive personal questions about my family like how long I've been married and the ages of my children.

We requested limited discovery, asking only for the Clerk's log of past public records requests. The morning of the trial, the Clerk's attorney turned over the discovery: The Clerk's lawyer texted a photo of a dry erase board with a handful of entries on it.

What has emerged in my past two years of reporting is that the Clerk has systematically charged high public records fees to deflect scrutiny of his internal operations.

Key subjects of my stories, business leaders who were targeted by the Clerk, have called for a federal investigation of abuse of power by an elected official.

The public records I obtained showed that far from a legitimate audit of a charity housing grant, the Clerk used his power as the county's elected auditor to engage in a chilling political takedown and smear of his 2012 political challenger, business leaders who supported his challenger, and a candidate who ran against a sitting County Commissioner in 2010.

Key public records from the Clerk's audit work paper files that I requested weren't turned over including smoking gun appraisal photos and draft audit reports, even though the Clerk's office told me I had received all public records related to the audit files.

After publication of my initial stories, activists from 20 area churches stepped forward to publicly criticize the Clerk's slow pay-outs to charities serving the homeless and needy. The area's largest homeless shelter said it would no longer seek federal pass-through grant money because the Clerk takes 11 months to pay grant recipients.

The Clerk had a reason to stonewall giving me the audit policy manual I requested: The Clerk's audit department structure violated basic government auditing standards. The Clerk's Finance Director over hundreds of millions in county government transactions also serves as Director of Internal Audit, which violates basic conflict of interest standards for auditors. Other auditors and academics said such an arrangement is essentially a charade: You can't objectively audit yourself.

The win at trial in June 2014 kept the door open for me to keep digging.

In September 2014, a County Commissioner accused the Clerk of illegally steering the county's lucrative banking and investment portfolio contract to the bank founded by Naples' sitting state senator.

In ongoing beat reporting, I obtained public records showing that the Clerk's office employee over the county's \$600 million portfolio is a 76-year-old, unlicensed former broker telecommuting from Arizona. I broke the story that he hadn't had a performance evaluation since 2007 and that the money manager hadn't complied with continuing education requirements, a violation of the county's investment policy and state law.

Such violations can prompt the state to withhold funds from the county government.

After more public records requests, I broke the story that the Clerk and the Florida state senator had transferred the county's \$600 million portfolio to another custodial firm, in violation of the county contract and without a vote of county commissioners. The county manager and county attorney, when questioned at a public meeting, said they didn't know about the switch until I broke the story based on the follow-up public records I had requested. The transfer violated the county's investment policy.

A broad base of our community has awakened to the idea that affordable public record access is critical to government transparency and, fundamentally, the democratic process.

Publicity about my case raised awareness about abuses related to high fees charged for public records access at other local governments in our community.

For example, Naples City Councilwoman Teresa Heitmann was charged \$900 for a public records request related to a police misconduct investigation. Naples City Councilman Doug Finlay was charged \$400 for public records he requested to find out if fire department budget requests were justified. A Collier School Board member, Erika Donalds, was told it would cost her thousands of dollars for public records related to data on student test scores. A citizen was charged \$1,400 just for the right to inspect public records – government water reports that should be easy to access online -- at the City of Naples.

In February 2015, we organized a Town Hall forum with the First Amendment Foundation to raise awareness of public records fee issues and public access. Community organizations including the League of Women Voters of Collier County, the Greater Naples Chamber of Commerce, the Naples Press Club, Florida Southwestern State College and four other civic and community organizations signed on as community partners to raise awareness of the event. An estimated 250 people attended the Town Hall.

Many people in my community tell me they are disgusted. They want enforcement of the public records law and transparency in government. The Clerk withheld millions of dollars in payments to hundreds of local businesses this summer as part of a dispute with the county manager. When it comes to the Clerk, they want me to follow the money. But this type of public service journalism isn't possible without public records.

There is no way I could have brought this suit if my attorneys hadn't agreed to represent me on a contingent fee basis.

I reached out to a public records activist, Joel Chandler, who referred me to an attorney who agreed to file my public records lawsuit challenging the fees on a contingent fee basis.

I'm thankful that my lawyer, Ryan Witmer, who graduated from law school in 2012, took my case. The law firm has come under scrutiny with critics charging in the past year that it has filed lawsuits on minor violations to collect settlements. In my case, my attorney and the firm have been in the fight to defend the public's right to know for a long haul, at substantial expense and risk. Attorneys Giovanni Mesa and Marrett Hanna defended me in the appeal.

Some of my fellow journalism colleagues in Southwest Florida took a bold stand on my behalf: Specifically, Amy Tardif, the news director of WGCU and chair-elect of the Radio, TV and Digital News Association, wrote letters and publicized the situation to her group's members; Brent Batten, a columnist at the Naples Daily News, asked the Clerk tough questions about the fees he charged me and the expense to taxpayers to defend his policy in repeated columns; the editors at the Fort Myers News-Press aggressively defended me on their editorial page; and the leadership of the Naples Press Club expressed support of my public records lawsuit and club members attended the public records trial.

A contingent fee lawyer isn't going to risk taking a case he or she might lose. If a citizens wins because their rights under the public records law have been violated, then the government should be mandated to pay their attorney's fees.

Sincerely,

Gina Edwards,

Investigative reporter, founder of Naples City Desk and WatchdogCity.com

## **Docs turned over in public records lawsuit show deeper involvement by Brock, staff in audit**

More than 300 pages of key documents surface after Brock's office said all public records turned over

### **Public records lawsuit docs: Brock's Audit Department structure violates government auditing standards**

Two hats equal conflict: Brock's Finance director signs off on hundreds of millions in payments, also serves as Internal Audit chief

Related In-depth Story:

### **Elected auditor Brock sics law enforcement on 2012 political challenger over housing grant; Naples City Desk investigation: Internal documents show Brock allegations false, misleading**

### **Appraisals reviewed by Brocks own staff 2 years ago document construction Brock says not proven**

#### **Excerpt from Editorial by News-Press**

"Apparently, Collier County Clerk of Court believes he has the right to violate public records laws and charge exorbitant fees for documents because he does not like the tactics of an investigative reporter. It is wrong, vindictive and hurts anyone's ability to fairly gain access to a public record. And it breaks the law.

Clerk of Court Dwight Brock has lost once in court and is once again challenging a judge's decision striking down the \$556 tab he wanted to charge investigative reporter Gina Edwards. We urge that any future court decisions also support the circuit court judge's ruling. Brock must abide by the law and not take his anger out on Edwards ...

It was Edwards' legal right to get the electronic information for the cost of a CD. It is also the right of anyone who seeks similar records. "