

IN THE CIRCUIT COURT
FOR THE SIXTH JUDICIAL CIRCUIT
DOUGLAS COUNTY, TUSCOLA, ILLINOIS

JOHN KRAFT)	
)	
Plaintiff)	
)	
vs)	
)	
ARCOLA TOWNSHIP)	Case No: 2013 MR 53
)	
)	
)	
Defendant)	

**ARGUMENT IN REPLY TO DEFENDANT’S REPLY TO
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT – 2014-MR-16**

NOW COMES THE PLAINTIFF, Mr. John Kraft, *pro se*, and hereby files this Argument In Reply To Defendant’s Reply To Plaintiff’s Motion For Summary Judgment – 2014-MR-16, and in support thereof, states as follows:

Remarkably, Defendant does not assert that they followed the requirements found in the Freedom of Information Act. The requirements found in the Freedom of Information Act’s (“FOIA”) statutory language being so clear; and their liability, knowing, and willful disregard so indefensible, they instead reach for something to nonetheless evade their responsibility to know and follow those statutory requirements.

The fundamental issue here is an issue specifically of whether the definition of the word “shall” actually means “optional” or somehow gives “the prerogative” to a public body to determine a different meaning.

A. BACKGROUND FACTS

Defendant admits the allegations in paragraphs 1, 2, and 3, including that Plaintiff submitted a Freedom of Information Act request seeking copies of public records.

4. That Defendant never responded to Plaintiff's Freedom of Information Act request dated April 12, 2014.

Defendant denied this allegation based on the following:

That Plaintiff was represented by attorney Jasmeen Baig in cause number 2013-MR-53 at the time of service of the FOIA request, that Defendant's counsel was prohibited from direct contact with the Plaintiff by virtue of the forgoing, and that Defendant claims they answered the FOIA request by sending response to Plaintiff's attorney in a separate legal case.

This issue of referencing an attorney of the Plaintiff is moot – Plaintiff had no attorney for this FOIA request. The statutory requirement for providing a response is found in Section 3(b) of FOIA, stating in part that *“each public body shall promptly provide, to any person who submits a request, a copy of any record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested.”*

The language is clear in that Defendant “shall” provide responsive records to the requestor. Defendant lacks any authority to determine they will respond to anyone other than the requestor. The Freedom of Information Act does not provide any such authority, and Rule 4.2 of the Illinois Rules of Professional

Conduct for Attorneys does not provide any such authority since this FOIA request was not the same “*subject of representation*” as the previous suit. The “*subject of representation*” of the previous suit is limited to two separate FOIA requests served on Defendant on April 23, 2013. Those two requests are not the subject of this suit.

Additionally, Defendant lacks any authority to grant their attorney the authority to respond to FOIA requests. Section 3.5(a) of FOIA clearly tells a public body who they shall appoint as FOIA Officers, and those appointments must be officers or employees of the public body. Defendant’s attorney Mr. Mark T. Petty is neither an officer nor an employee of Defendant public body. While he can certainly review any requests and responses as the legal advisor to the Defendant, and provide his opinion, he does not possess the authority to respond to the requestor.

Finally, even if Defendant’s attorney was an officer or employee of the public body, which he is not, he could not act as FOIA officer without taking the mandatory training required for all FOIA officers. See Exhibit A.

B. FREEDOM OF INFORMATION ACT

1. While Defendant agrees Plaintiff correctly cited the Freedom of Information Act, Defendant states that FOIA does not require any direct furnishing of the information to the [requestor (Plaintiff)] and that it is entirely appropriate to send responses to [Plaintiff’s] lawyer and that it is the Defendant’s option and prerogative to make such a reply.

Again, Defendant is wrongly claiming that Plaintiff FOIA requestor is represented by counsel other than for 2013-MR-53. FOIA specifically uses the word “*shall*”, as opposed to “*may*”, when it states that “...*each public body shall promptly provide, to any person who submits a request...*” If the legislature had wanted to give the public body the “*option*” or “*prerogative*” on who to send responses to FOIA requests to, it would have certainly used the word “*may*”, but it did not choose to do that.

The FOIA has specific time-frames in which a request must be complied with. The public body is held to the time requirement and responsible for all consequences of violating that time-frame for response. A private person, attorney or not, cannot be held to any time-frames required under FOIA.

There are several consequences a public body faces for violating the time-frame, including but not limited to: 1) public body cannot claim the request is unduly burdensome, and, 2) public body cannot charge for any copies over 50 pages, and, 3) non-response within the time-frame is considered a denial of the FOIA request and can be used as the basis for filing a civil suit under Section 11 of FOIA.

By responding to someone other than the requestor, the public body is unduly delaying the response, potentially creating a cost to the requestor through invoices from the attorney that was sent the responsive records, violates the statutory language, and breaks the “chain of custody” in the response.

Section 1 of FOIA states in part that “*It is a fundamental obligation of government to operate openly and provide public records as expeditiously and*

efficiently as possible in compliance with this Act.” The process Defendant wrongly thinks they have the “*option and prerogative*” to do also violated this statement in Section 1. It is neither expedient nor efficient to provide responsive records to anyone other than the requestor.

2. Defendant states in this paragraph of their reply to the summary judgment motion that the FOIA requires a public body to promptly provide to any requestor a copy of the responsive records, and then further claims they provided the records to Plaintiff’s counsel, and then attempts to hold claimed counsel to the requirements of FOIA time-lines. This is an absurdity, and is clearly a violation of FOIA. Plaintiff did not have counsel for this FOIA request. This is clearly an attempt at delaying Plaintiff’s receipt of the records, an attempt at imposing additional fees by way of sending the responsive records to an attorney, and an attempt at imposing additional restraints on access to information.

3. Defendant suggests that Plaintiff’s argument lacks any candor by not indicating that Plaintiff’s lawyer had received this information. Plaintiff did indicate that he “*has not received the requested records from the Defendant.*” This is the very reason the legislature used the phrase “*shall promptly provide, to any person who submits a request...*” Additionally, at the time Plaintiff filed this case number 2014-MR-16, Plaintiff had no knowledge of any responsive records supplied to any supposed lawyer Defendant claimed to have responded to. Even if Plaintiff had that knowledge, which he did not, nothing would change the fact

that Defendant violated FOIA by not promptly providing, to the person who submitted the request, a copy of the responsive records.

C. Defendant admitted in their Reply to Motion for Summary Judgment, that there *“is no issue as to material fact as to whether or not the information was supplied by the Defendant’s attorney to the Plaintiff’s attorney under the appropriate issues.”*

In light of this admission of the Defendant that records were only provided to a person other than the person making the request, which is inconsistent with Section 3(b) of FOIA, there remains no other genuine issue of material fact, and Plaintiff is entitled to judgment as a matter of law.

WHEREFORE, PLAINTIFF RESPECTFULLY PRAYS THAT THIS COURT GRANT the Motion for Summary Judgment, and

A. Declare Defendants to be in violation of the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.* by failing to produce the requested records and by improperly denying the request for public records; and

B. Enjoin the Defendant from continuing to withhold access to any and all non-exempt public records responsive to Plaintiff’s FOIA request and further enjoin Defendant to provide copies of any and all records responsive to Plaintiff’s FOIA requests without further delay; and

C. Enjoin the Defendant to prepare, forthwith, an affidavit declaring that they will provide complete access to Plaintiff and further declaring that any and all non-exempt public records responsive to the request will be made available to Plaintiff; and

D. Order Defendant to prepare, forthwith, an affidavit identifying with specificity any and all public records responsive to Plaintiff's FOIA request that are claimed to be subject to legal exemption from disclosure and further identifying with specificity the reason(s) for any such claim of exemption; and

E. Declare Defendant acted willfully, intentionally, and in bad faith failed to respond to and to provide responsive documents to Plaintiff's FOIA request; and

F. Order Defendant to pay a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence, as outlined in 5 ILCS 140/11(j) as the Court finds just and equitable; and

G. Award Plaintiff reasonable fees, including attorney fees if Plaintiff should retain the services of an attorney, and all costs/fees incurred in litigating this suit as the Court finds just and equitable.

Dated: November __, 2014

Respectfully submitted,

John Kraft, *pro se*
7060 Illinois Highway 1
Paris, Illinois 61944
Tel: (217) 808-2527
Plaintiff

Signed and sworn before me
This ____ day of November, 2014



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

September 29, 2014

Lisa Madigan
ATTORNEY GENERAL

VIA ELECTRONIC MAIL
Mr. John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944
john@heirloomvideography.net

RE: Freedom of Information Act Request
2014 FOIA 031403

Dear Mr. Kraft:

Thank you for writing to the Office of the Illinois Attorney General with your request for information pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2012)).

In an e-mail received on September 22, 2014, you requested "[a]ny records of a Mr. Mark T. Petty (or any variation ie: Mark Petty) having completing [*sic*] the Freedom of Information Act Training for FOIA Officers."

Please be advised that this office has conducted a search, and we have located no records responsive to your request.

Very truly yours,

A handwritten signature in blue ink that reads "Caitlin Q. Knutte".

CAITLIN Q. KNUTTE
Assistant Attorney General
FOIA Officer

CQK:lk

CERTIFICATE OF SERVICE

John Kraft, Plaintiff, hereby certifies that they caused a copy of Plaintiff's Motion For Summary Judgment for Complaint for Declaratory Judgment and Injunctive to be served upon the following parties via hand delivery or by U.S. Mail, with proper postage prepaid on November __, 2014.

John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944
Tel: (217) 808-2527
Plaintiff, pro se

Mark Petty
Petty Law Office, P.C.
111 East Main Street
P.O. Box 128
Arcola, IL. 61910