

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

JOHN KRAFT )  
 )  
 Plaintiff )  
 )  
 vs )  
 )  
 ARCOLA TOWNSHIP ) Case No: 2014 MR 16  
 )  
 )  
 )  
 Defendant )

PLAINTIFF MOTION FOR SUMMARY JUDGMENT FOR  
COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

**NOW COMES THE PLAINTIFF**, Mr. John Kraft, *pro se*, and hereby Moves this Court for Summary Judgment, pursuant to 735 ILCS 5/2-1005(a), and in support thereof, states as follows:

**A. BACKGROUND FACTS:**

1. That the Plaintiff – John Kraft, is an Illinois resident, and resides in the Edgar County.
2. That the Defendant is the Township of Arcola, a public body as that term is defined by 5 ILCS 140/2(a).
3. That on April 12, 2014, Plaintiff served a FOIA request on Defendant office of Arcola Township seeking copies of public records. A true and correct copy of the request is attached hereto and incorporated herein as Exhibit A.

4. That Defendant has never responded to Plaintiff's April 12, 2014 request for public records.

**B. FREEDOM OF INFORMATION ACT APPLICATION:**

1. Section 1 of the Illinois Freedom Of Information Act (FOIA), 5 ILCS 140/1, provides 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...” and that “The General Assembly recognizes that this Act imposes fiscal obligations on public bodies...and declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end...”

2. Section 2(c) of FOIA defines public records as “all records...having been prepared by or for...any public body.”

3. Section 3(a) of FOIA states that public bodies shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act. This paragraph continues by stating that “Notwithstanding any other law, a public body may not grant to any person or entity, whether by contract, license, or otherwise, the exclusive right to access and disseminate any public record as defined in this act.”

4. Section 3(b) of FOIA provides that “each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested.”

5. Section 3(d) of FOIA explains the time period of 5 days for complying with or denying a request, unless the time for response is properly extended (f) by an additional 5 days, or by mutual agreement between the parties.

6. Section 3.5(a) of FOIA states that “*each public body shall designate one or more officials or employees to act as its Freedom of Information officer or officers.*”

7. Section 9 of FOIA explains that a denial of a request shall be in writing, the reasons for the denial, and a detailed factual basis for the application of any exemption claimed. This notice shall also inform the requestor of the right to review by the Public Access Counselor, and also inform them of the right to Judicial Review under Section 11 of FOIA. Subparagraph (c) states that a requestor shall be deemed to have exhausted their administrative remedies if the public body fails to act within the time periods provided in Section 3 of this Act.

**C. ARGUMENT:**

Plaintiff requested public records as defined in Section 2(a) on April 12, 2014. Defendant never responded to the request for records. On May 21, 2014, Plaintiff filed Complaint in Circuit Court under the authority of Section 11 of the Freedom of Information Act.

As of the date of this Motion, Plaintiff has not received the requested public records from Defendant. By not properly responding within the time periods specified, the request is deemed a denial. Defendant is required by law to respond to the person who submits a request.

**WHEREFORE**, THE 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 in the failure 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: August 7, 2014

Respectfully submitted,

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

Signed and sworn before me  
This \_\_\_\_ day of August, 2014

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 August 7, 2014.

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*Plaintiff, pro se*

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