

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

JOHN KRAFT )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 ARCOLA TOWNSHIP ) 2014-MR-34  
 )  
 )  
 Defendant. )

**PLAINTIFF'S REPLY TO DEFENDANT'S ANSWER TO  
COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Now comes Plaintiff, Mr. John Kraft, *pro se*, and states the following for his reply to Defendant's Answer to Complaint for Declaratory Judgment and Injunctive Relief:

1. Agree.
2. Agree.
3. Agree.
4. Agree.
5. Agree.
6. Agree.
7. Agree.
8. Disagree. Defendant states that they responded to Plaintiff's FOIA request by providing a copy of the response to Plaintiff's attorney in cause number 2013-MR-53, that they

served it in good time and fully in compliance with the requirements of the Act.

Plaintiff disagrees. First, Plaintiff is not represented by counsel in this FOIA request and never has been, and that Plaintiff is the person who submitted the request, and, second, that *"to respond in good time and fully in compliance with the Act"*, Defendant would have had to fully comply with Section 3(b), which includes one of the statutory requirements for providing a response, and states 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 person who submits a request". 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.

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 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. 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 since he has never successfully completed an electronic training curriculum required of all FOIA officers [5 ILCS 140/3.5(b)].

9. Agree

10. Pursuant to Section 11(h) of the Act [5 ILCS 140/11(h)] Plaintiff is requesting that these proceedings take precedence on the docket over all other causes, except those causes the court considers to be of greater importance, and be assigned a hearing and trial at the earliest practicable date and expedited in every way.

#### **COUNT ONE**

(Violation of the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*)

11. Plaintiff reaffirms paragraphs 1 - 10 as though fully restated herein.

12. Plaintiff is being denied his legal right to inspect public records by Defendant failure to produce the records requested on June 1, 2014.

13. Plaintiff has no adequate remedy at law.

**COUNT TWO**

(Violation of the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*)

14. Plaintiff reaffirms paragraphs 1 - 10 as though fully restated herein.

15. Defendant improperly denied the FOIA request by their failure properly respond to the June 1, 2014 FOIA request in accordance with 5 ILCS 140/3 and 5 ILCS140/9.

16. Plaintiff has no adequate remedy at law.

**COUNT THREE**

(Violation of the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*)

17. Plaintiff reaffirms paragraphs 1 - 10 as though fully restated herein.

18. Defendant violated 5 ILCS 140/3 (a) by improperly granting, by contract or otherwise, the exclusive right to access and disseminate public records to Mr. Mark Petty, a person or entity that is neither an employee nor an official of the Township of Arcola.

19. Plaintiff has no adequate remedy at law.

**WHEREFORE,** Plaintiff prays this Court:

A. Declare Defendant to be in violation of the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*; 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 from granting 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; and

D. 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

E. 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

F. 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

G. 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

H. Award Plaintiff reasonable fees, including attorney fees should Plaintiff 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,

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

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

**CERTIFICATE OF MAILING**

I, the undersigned under penalties of perjury as provided in the Code of Civil Procedure, do hereby certify that I mailed a true and exact copy of PLAINTIFF'S REPLY TO DEFENDANT'S ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - 2014-MR-34 to the below stated individual; by placing the same properly addressed in the United States Mail at Paris, Illinois, postage fully prepaid, on this \_\_\_\_\_ day of \_\_\_\_\_ 2014 in an envelope securely sealed, with proper postage prepaid, and legibly addressed.

Mark T. Petty, Petty Law Office, P.C.  
111 E. Main Street  
P.O. Box 128  
Arcola, Illinois 61910

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7060 Illinois Highway 1  
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*Plaintiff*