

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

JOHN KRAFT)

Plaintiff)

v.)

ARCOLA TOWNSHIP)

Defendant)

2014-MR-54

FILED

DEC - 3 2014

COPY

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

Julia Mills
CLERK OF THE CIRCUIT COURT
DOUGLAS COUNTY, ILLINOIS

Now comes Plaintiff, Mr. John Kraft, *pro se*, who prays this Court render a declaratory judgment and grant injunctive relief under the Freedom of Information Act ("FOIA"), 5 ILCS 140/1, et seq. For this Complaint, Plaintiff states and alleges as follows:

INTRODUCTION

1. This is a Complaint under the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1 et seq.

2. Pursuant to the fundamental philosophy of the American constitutional form of government, the General Assembly has declared it to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and

public employees consistent with the terms of the Act. 5 ILCS 140/1.

3. Restraints on access to information, to the extent permitted by FOIA, are limited and narrow exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of the people. *Id.*

4. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2.

5. A public body is required to respond to FOIA requests within five business days, or, when specific criteria are met and the public body properly claims an extension of time within the five-day deadline, within another five business days. 5 ILCS 140/3(d), (e). Failure to respond to a FOIA request in a timely manner constitutes a denial. *Id.*

6. 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. 5 ILCS 140/3(a).

7. A public body is required to promptly reply, to any person who submits a request, subject to any fee provisions of Section 6, with a copy of the public record required to be disclosed by subsection (a) of this Section. 5 ILCS 140/3(b).

8. If the Court determines that a public body willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith, the Court shall impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence. 5 ILCS 140/11(j).

9. Under FOIA, Section 11(h), *"except as to causes the Court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way."*

10. Defendant Arcola Township has willfully and intentionally violated FOIA by failing to properly respond to a FOIA request by Plaintiff John Kraft for non-exempt records.

11. Defendant Arcola Township has systematically failed to comply with FOIA requests in a timely manner and requires Court intervention to correct this systemic failure and achieve the transparency required under FOIA.

PARTIES

12. Plaintiff - John Kraft, *pro se*. The plaintiff is an Illinois resident, and resides in the County of Edgar.

13. Defendant is the Township of Arcola, a public body as that term is defined in FOIA. 5 ILCS 140/2(a).

PLAINTIFF'S FOIA REQUEST AND DEFENDANT'S DENIAL

14. On July 24, 2014, Plaintiff served a FOIA request on Defendant office of Arcola Township seeking copies of public records. (Exhibit A)

15. All records relating to the obligation, receipt, and use of public funds are public records subject to inspection and copying. 5 ILCS 140/2.5.

16. Having never received a response, on August 4, 2014 Plaintiff sent an email to Defendant asking if they planned on responding to the July 24, 2014 FOIA request. (Exhibit B)

17. On August 7, 2014, Defendant responded by stating "*We prepared the response to this FIOA within the required time, and sent it to our attorney.*" (Exhibit C)

18. Defendant's August 7, 2014 response indicated to Plaintiff that Defendant granted Mr. Petty, attorney for Defendant, exclusive access to, and that he was responsible for, dissemination of the requested public records.

19. 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. 5 ILCS 140/3(a).

20. Having still never received a proper response, Plaintiff emailed Defendant again on August 7, 2014 explaining that he expected the response to the original request no later than 10:00 a.m. on Monday, August 11, 2014. In this email Plaintiff explained this offer was an attempt to avoid costly and time-consuming litigation. (Exhibit D)

21. As of December 3, 2014, Defendant provided no further response.

22. Section 11(a) of the Illinois Freedom Of Information Act [5 ILCS 140/11(a)] provides that: "*Any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief.*"

DEFENDANT'S SYSTEMIC FAILURE TO COMPLY WITH FOIA

23. Defendant has engaged in the pattern and practice of not responding to the requesters of FOIA requests, declaring FOIA requests a "question" instead of a request for records, and providing incomplete and improperly redacted responsive records.

24. According to records within the Sixth Judicial Circuit, Defendant has been the subject of multiple circuit court actions relating to FOIA production. Those are listed as case numbers 2013-MR-53, 2014-MR-16, 17, 20, 33, and 34 among others. Five of the six cases are brought by Mr. John Kraft. These cases are still undecided at the time of filing this Complaint.

25. Upon information and belief, based on the recurring pattern above, discovery would further show that Defendant fails to properly respond to FOIA requests in a timely manner or otherwise violates the FOIA on a consistent basis.

COUNT ONE

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

26. Plaintiff reaffirms paragraphs 1 - 25 as though fully restated herein.

27. Plaintiff is being denied his legal right to inspect public records by Defendant failure to produce the records requested on July 24, 2014.

28. Plaintiff has no adequate remedy at law.

COUNT TWO

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

29. Plaintiff reaffirms paragraphs 1 - 25 as though fully restated herein.

30. Defendant improperly denied the FOIA request by their failure properly respond to the July 24, 2014 FOIA request in accordance with 5 ILCS 140/3 and 5 ILCS140/9.

31. Plaintiff has no adequate remedy at law.

COUNT THREE

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

32. Plaintiff reaffirms paragraphs 1 - 25 as though fully restated herein.

33. Defendant improperly granted, by contract, license, 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. A violation of 5 ILCS 140/3(a).

34. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays this Court:

A. In accordance with FOIA Section 11(f), afford this case precedence on the Court's Docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;

B. Declare DEFENDANT Arcola Township has violated FOIA;

C. Order DEFENDANT to produce the requested records to Plaintiff under FOIA;

C. Enjoin the DEFENDANT from withholding non-exempt public records under FOIA;

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;

D. Order DEFENDANT to properly respond to FOIA requests within the required deadline;

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

F. Order DEFENDANT to pay a civil penalty of between \$2,500 and \$5,000 for each willful and intentional failure to comply with FOIA and any other act of bad faith in responding to the request;

G. 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.

H. Award such other relief the Court considers appropriate.

Dated: December 3, 2014

Respectfully submitted,

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

John Kraft, pro se

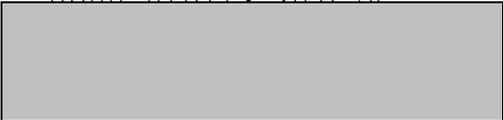

Plaintiff

Exhibit A

From: John Kraft
Date: 24/07/2014 06:45 (GMT-06:00)
To: arcolats@arcola-il.com
Subject: FOIA Request (ARCOLA Twp) 7-24-2014

In accordance with the Illinois Freedom Of Information Act, I request the following:

1. Copy of all bills/invoices presented for payment in the month of July 2014.

This is not a commercial request.

Electronic copies preferred.

THE ADDRESS TO SEND RESPONSIVE PUBLIC RECORDS TO IS:

John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944

OR EMAIL TO:

john@illinoisleaks.com

Thanks,
John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944

217-808-2527

Exhibit B

From: John Kraft
Sent: Monday, August 04, 2014 3:57 PM
To: arcolats@arcola-il.com
Subject: Re: FOIA Request (ARCOLA Twp) 7-24-2014

Do you plan on answering this foia request?

Sent from Samsung Mobile

----- Original message -----

From: John Kraft
Date: 24/07/2014 06:45 (GMT-06:00)
To: arcolats@arcola-il.com
Subject: FOIA Request (ARCOLA Twp) 7-24-2014

In accordance with the Illinois Freedom Of Information Act, I request the following:

1. Copy of all bills/invoices presented for payment in the month of July 2014.

This is not a commercial request.

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THE ADDRESS TO SEND RESPONSIVE PUBLIC RECORDS TO IS:

John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944

OR EMAIL TO:

john@illinoisleaks.com

Thanks,
John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944

217-808-2527

Exhibit C

To:
John Kraft;
Cc:
Bill Coombe <jbcoombe@hotmail.com>;
Carol Ingram <cingram@pettylawoffice.net>;
You replied on 8/7/2014 2:05 PM.
Mr. Kraft,

We prepared the response to this FIOA within the required time, and sent it to our attorney.

Deana Shields – Office Manager Arcola Twp.

From: John Kraft
Sent: Monday, August 04, 2014 3:57 PM
To: arcolats@arcola-il.com
Subject: Re: FOIA Request (ARCOLA Twp) 7-24-2014

Do you plan on answering this foia request?

Sent from Samsung Mobile

Exhibit D

To:Arcola Township <arcolats@arcola-il.com>;
Mrs. Shields,

Whether or not you "prepared the response" to this requested within the required time does not matter at this point. The question needing answered is did you send the response to me within the required time. It is pretty hard to miss where I wanted the response sent to when I use all capitol letters, bold type, and underlined, but that still did not happen.

I cannot believe you could miss this in the original request:

"THE ADDRESS TO SEND RESPONSIVE PUBLIC RECORDS TO IS:"

I am extending this offer in an attempt at avoiding costly and time-consuming litigation:

Send the requested records to me, at the address listed in the original request. That is the only way to comply with the Freedom of Information Act. Do they not teach that in the mandatory online training for FOIA officers?

Additionally, here is a snippet from the FOIA that could be of use to you in the future:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=85&ChapterID=2>

Section 3 (b):

*(b) Subject to the fee provisions of Section 6 of this Act, **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.*

I did not read in that paragraph where sending it to your attorney, and him sending it to other places in the world without sending it to me would constitute compliance with FOIA. Did you?

You **KNOW** that I am the person that sent the request.

Why is it so hard for you to comply with the Freedom Of Information Act?

I expect the response to this original request no later than 10:00 a.m. on Monday, August 11, 2014.

Thanks,
John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944
217-808-2527

OR EMAIL TO:

john@illinoisleaks.com

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
DOUGLAS COUNTY, ILLINOIS

JOHN KRAFT

v.

ARCOLA TOWNSHIP

NO. 2014-MR-

SUMMONS

To the defendant: Arcola Township (Arcola Township Clerk, ATTN: William Coombe) 108 East Main Street, Arcola, Illinois 61910

YOU ARE SUMMONED and required to file an answer in this case, or otherwise file your appearance,
in the office of the clerk of this court Douglas County Courthouse, 401 South Center Street, Tuscola, Illinois 61953,
(Insert name of building, room number, address, including city)

Illinois, within 30 days after service of this summons, not counting the day of service. IF YOU FAIL TO DO SO, A JUDGMENT OR DECREE BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT.

To the officer:

This summons must be returned by the officer or other persons to whom it was given for service, with indorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed. This summons may not be served later than 30 days after its date.

WITNESS _____, 20 ____.

(Seal of court)

Clerk of court

Associate Circuit Clerk-Deputy

Name John Kraft
Attorney for *pro se*
Address 7060 Illinois Highway 1
City Paris, Illinois 61944
Telephone 217-808-2527

Date of service: _____, 20 ____.
(To be inserted by officer on copy left with defendant or other person)

SHERIFF'S FEES

Service and return \$ _____
Miles _____
Total \$ _____

Sheriff of _____ County

I certify that I served this summons on defendants as follows:

(a) – (Individual defendants–personal):

By leaving a copy and a copy of the complaint with each individual defendant personally, as follows:

Name of defendant	Date of service
_____	_____
_____	_____
_____	_____

(b) – (Individual defendants–abode):

By leaving a copy and a copy of the complaint at the usual place of abode of each individual defendant with a person of the family, or a person residing there, of the age of 13 years or upwards, informing that person of the contents of the summons, and also by sending a copy of the summons and of the complaint in a sealed envelope with postage fully prepaid addressed to each individual defendant at his or her usual place of abode, as follows:

Name of defendant	Person with whom left	Date of service	Date of mailing
_____	_____	_____	_____
_____	_____	_____	_____

(c) – (Corporation defendants):

By leaving a copy and a copy of the complaint with the registered agent, officer or agent of each defendant corporation, as follows:

Defendant corporation	Registered agent, officer or agent	Date of service
_____	_____	_____
_____	_____	_____

(d) – (Other service):

_____, Sheriff of _____ County

By _____, Deputy