

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
EDGAR COUNTY, ILLINOIS

KIRK ALLEN, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 16-MR-28  
 )  
 ILLINOIS STATE AUDITOR GENERAL and )  
 FRANK J. MAUTINO operating in his official )  
 capacity as Auditor General, )  
 )  
 Defendants. )

**ANSWER**

COME NOW the defendants, Office of Auditor General and Frank J. Mautino, by and through their counsel, LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to §2-602 (735 ILCS 5/2-602) of the Code of Civil Procedure, hereby answer the complaint filed by the plaintiff. In support thereof, the following statements are made.

1. Plaintiff – Kirk Allen, is an Illinois resident, and resides in the County of Edgar.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, have insufficient knowledge to admit or deny the allegations contained in ¶1 of the complaint.

2. Defendants are the Illinois State Auditor General, a public body as that term is defined by 5 ILCS 140/2(a), and Frank J. Mautino, in his official capacity as the Auditor General.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, admit the allegations contained in ¶2 of the complaint.

3. This court has jurisdiction as outlined in the Illinois Freedom of Information Act

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, admit the allegations contained in ¶3 of the complaint.

4. On February 9<sup>th</sup>, 2016, Plaintiff served a FOIA request on Defendant office of Auditor General, seeking copies of public records that included, among others:

1. Copy of any communication either electronic or paper received by the Office of Auditor General and Frank Mautino seeking a response or answers to questions about Frank Mautino's campaign records, by any person, group of people, and/or any legislatures, either individually or as a group in the last 30 days.

2. Copy of any response provided by Frank Mautino to the above referenced requests. A true and correct copy of the request is attached hereto and incorporated herein as Exhibit A.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, admit the allegations contained in ¶4 of the complaint.

5. On February 10<sup>th</sup>, 2016, Defendant responded by e-mail informing Plaintiff that the response had been mailed because the files were too large to send via the internet.

A true and correct copy of the Defendant's communication is attached hereto and incorporated herein as Exhibit B.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, admit the allegations contained in ¶5 of the complaint.

6. On February 12<sup>th</sup>, 2016, Plaintiff received by US Mail, a FOIA response letter and two computer disks that contained the response mailed from the Defendant. The computer disks contained over 5,500 pages of records of which many had nothing to do with

the requested records. A true and correct copy of all the provided records is attached on two computer disks herein as Exhibit C1 and C2. In addition, a true and accurate record is provided in 4 binders marked Exhibit D-1 of 4, 2 of 4, 3 of 4, and 4 of 4. These same documents can be downloaded from the following link

[https://www.dropbox.com/sh/r9s6gjb1zsvqce9/AAACBnAm1E\\_RNCFfwoRBiJnna?dl=0](https://www.dropbox.com/sh/r9s6gjb1zsvqce9/AAACBnAm1E_RNCFfwoRBiJnna?dl=0)

The FOIA response letter from the Defendant dated February 10, 2016, is attached hereto and incorporated as Exhibit E.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, have insufficient knowledge to admit or deny when plaintiff received the response letter and two computer disks containing documents sent by the Office of the Auditor General. Defendants Office of the Auditor General and Frank J. Mautino, admit that the computer disks contained over 5500 pages of documents, but deny that the documents were unresponsive to the request made by the plaintiff. Defendants Office of Auditor General and Frank J. Mautino, admit the remaining allegations contained in ¶6 of the complaint.

7. A review of the records provided in the February 9<sup>th</sup>, 2016, FOIA request contain approximately 60 e-mail documents that appear to have been redacted of any content as only the header information is available, (See Exhibit D). The Defendant has provided no exemption for redactions of the content of these emails.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, deny the allegations contained in ¶7 of the complaint.

8. On February 14<sup>th</sup>, 2016, Plaintiff served a second FOIA request on Defendants

office seeking copies of public records that included, among others:

1. Copy of any communication either electronic or paper received by the Office of Auditor General and Frank Mautino seeking a response or answers to questions about Frank Mautino's campaign records, by any person, group of people, and/or any legislatures, either individually or as a group between February 10<sup>th</sup>, 2016 and February 15<sup>th</sup>, 2016, beginning and ending date inclusive.

2. Copy of any response provided by Frank Mautino to the above referenced requests.

A true and correct copy of the FOIA request is hereto and incorporated herein as Exhibit F.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, admit the allegations contained in ¶8 of the complaint.

9. On February 18<sup>th</sup>, 2016, Plaintiff received by e-mail the response to Plaintiffs February 14, 2016 FOIA request that contained 10 Attached documents.

A true and correct copy of the e-mail and all provided records is attached hereto and incorporated herein as Exhibit G.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, have insufficient knowledge to admit or deny the allegations of when plaintiff received the e-mail. Defendants admit that they produced ten (10) responsive documents, nine of which are attached to the complaint as Exhibit G. Defendants deny that Exhibit G contains 10 unique attachments. Defendants affirmatively state that plaintiff has failed to attach the version of the e-mail from REC to Dahlquist, Jim, dated 2/10/2016 at 10:14 AM, which omits the header at the top of the page which states, "Jim Dahlquist – David Giuliani, Ottawa Times, 815-431-4041 or cell 505-426-5067."

10. A review of the records provided by Defendant to the February 9<sup>th</sup> and 14<sup>th</sup>,

2016 FOIA requests (Exhibit C and Exhibit G) to Plaintiffs FOIA requests do not contain certain records that are subject to the Plaintiff's FOIA request. Incorporated herein as Exhibit H is an Affidavit from John Kraft who received certain records in his FOIA request to the Defendant labeled as page numbers in Exhibit H. The documents Kraft received, specifically pages 6-8 of Exhibit H, are clearly applicable to Plaintiffs FOIA request and were not provided to Plaintiff. Specifically, the records Kraft received were in fact communications from a State Representative and the Defendants response to those communications and dealt with Defendant Frank Mautino's campaign expenditures, which are clearly records subject to Plaintiffs FOIA request which stated:

1. Copy of any communication either electronic or paper received by the Office of Auditor General and Frank Mautino seeking a response or answers to questions about Frank Mautino's campaign records, by any person, group of people, and/or any legislatures, either individually or as a group between February 10<sup>th</sup>, 2016 and February 15<sup>th</sup>, 2016, beginning and ending date inclusive.

2. Copy of any response provided by Frank Mautino to the above referenced requests.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, admit the allegations contained in ¶10 of the complaint.

11. Section 2(c) of the FOIA [5 ILCS 140/2(c)] defines "Public records" as : "Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, admit the allegations contained in ¶11 of the complaint.

12. Section 11(a) of the 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.”

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, admit the allegations contained in ¶12 of the complaint.

13. Pursuant to Section 11(h) of the Act [5 ILCS 140/11(h)], Plaintiff requests that these proceedings take precedence on the docket over all other causes, except those cases 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.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, admit the allegations contained in ¶13 of the complaint.

**COUNT I**

14. Plaintiff reaffirms paragraphs 1-13 as though fully restated herein.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, reallege and reaffirm their answers as set forth in ¶¶1-13 of their answer.

15. Plaintiff is being denied his legal right to inspect public records by Defendants failure to produce the records requested on February 9<sup>th</sup> and 14<sup>th</sup>, 2016. See Exhibit A & F.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, deny the allegations contained in ¶15 of the complaint.

16. Plaintiff has no adequate remedy at law.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, deny the allegations contained in ¶16 of the complaint.

**COUNT II**

17. Plaintiff reaffirms paragraphs 1-13 as though fully restated herein.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, reallege and reaffirm their answers as set forth in ¶¶1-13 of their answer.

18. Defendant improperly denied the request in Count One of this Complaint by their failure to follow 5 ILCS 140/3 and 5 ILCS 140/9 and 5 ILCS 140/9(a).

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, deny the allegations contained in ¶18 of the complaint.

19. Plaintiff has no adequate remedy at law.

**ANSWER:**

Defendants, Office of Auditor General and Frank J. Mautino, deny the allegations contained in ¶19 of the complaint.

WHEREFORE for the above and foregoing reasons, defendants, Office of Auditor General and Frank J. Mautino, respectfully request this honorable Court to enter judgment in

their favor and against the plaintiff.

Respectfully submitted,

OFFICE OF AUDITOR GENERAL and  
FRANK J. MAUTINO, in his official  
capacity as Auditor General,  
Defendants,

LISA MADIGAN, Attorney General  
State of Illinois,  
Attorney for Defendants.

KAREN L. McNAUGHT, #6200462  
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Of Counsel.

By: 

KAREN L. McNAUGHT  
Assistant Attorney General

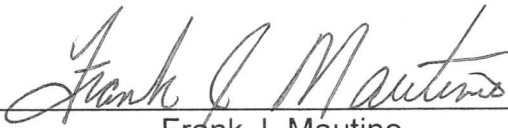


STATE OF ILLINOIS )  
 ) ss  
COUNTY OF SANGAMON )


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Edgar County No. 16-MR-28

**VERIFICATION**

I, Frank J. Mautino, in my official capacity as Auditor General, certify under penalties as provided by law pursuant to §1-109 of the Code of Civil Procedure that the foregoing answers to plaintiff's complaint, including the statements of want of knowledge in answer to paragraphs 1, 6 and 9 of the Complaint are true and correct, to the best of my knowledge, based on information assembled by authorized agents of the Office of Auditor General after a reasonable inquiry.

  
\_\_\_\_\_  
Frank J. Mautino

Subscribed and sworn to before me  
this 21<sup>th</sup> day of June, 2016.

  
\_\_\_\_\_  
Notary Public




**CERTIFICATE OF SERVICE**

Karen L. McNaught, Assistant Attorney General, herein certifies that she has served a copy of the foregoing Answer upon:

Kirk Allen  
3894 Coach Road  
Kansas, Illinois 61933

by mailing a true copy thereof at the address referred to above in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on June 21, 2016.



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Karen L. McNaught  
Assistant Attorney General