

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

ANDREW GARRETT,)
)
Plaintiff,)
)
v.)
)
ILLINOIS OFFICE OF THE)
GOVERNOR,)
)
Defendant.)

COMPLAINT

NOW COMES Plaintiff, ANDREW GARRETT, by his undersigned attorneys, LOEVY & LOEVY, and brings this suit to overturn Defendant ILLINOIS OFFICE OF THE GOVERNOR's refusal, in willful violation of the Illinois Freedom of Information Act, to produce the policies that serve as the basis for any agency requesting the assistance of the Governor's office in responding to FOIA requests. In support of its Complaint, GARRETT states as follows:

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is 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 Illinois Freedom of Information Act ("FOIA"). 5 ILCS 140/1.

2. Restraints on access to information, to the extent permitted by FOIA, are limited 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. 5 ILCS 140/1.

3. 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 140/3.

4. 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.”

PARTIES

5. Plaintiff ANDREW GARRETT is the FOIA requester in this case.

6. Defendant IOG is a public body located in Cook County, Illinois.

JULY 13 REQUEST

7. On August 8, 2016, GARRETT requested “any policy that is the basis for any agency requesting the assistance of the Governor’s office in responding to FOIA requests.”

8. On August 15, 2016, IOG acknowledged that it received GARRETT’s request and took a five day extension. Exhibit A.

9. On August 22, 2016, IOG denied GARRETT’s request stating that the responsive document was exempt under Section 7(1)(m) which protects communications “between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation,” and under 7(1)(f), which exempts, “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated.” Exhibit B.

10. GARRETT does not seek and did not ask for any deliberative material or legal advice. Instead, he requested the actual policies that apply to IOG's handling of FOIA requests.

COUNT I – JULY 13 WILLFUL VIOLATION OF FOIA

11. The above paragraphs are incorporated by reference.

12. IOG is a public body under FOIA.

13. The records sought in GARRETT's FOIA request are non-exempt public records of IOG.

14. IOG has willfully and intentionally violated FOIA by refusing to produce the requested records.

WHEREFORE, GARRETT asks that the Court:

- i. 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;
- ii. declare that IOG has violated FOIA;
- iii. order IOG to produce the requested records;
- iv. enjoin IOG from withholding non-exempt public records under FOIA;
- v. order IOG to pay civil penalties;
- vi. award Plaintiff reasonable attorneys' fees and costs;
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ Joshua Hart Burday

Attorneys for Plaintiff
ANDREW GARRETT

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Joshua Burday
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STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
CAPITOL BUILDING, 207 STATE HOUSE
SPRINGFIELD, ILLINOIS 62706

BRUCE RAUNER
GOVERNOR

August 15, 2016

VIA EMAIL

Andrew Garrett
andrew.garrett.tcoa@gmail.com

Re: FOIA Request # 2016-187

Dear Mr. Garrett:

This letter is in response to your Illinois Freedom of Information Act (“FOIA”) request received on August 8, 2016 seeking: “any policy that is the basis for any agency requesting the assistance of the Governor's office in responding to FOIA requests.”

Please be advised that, pursuant to 5 ILCS 140/3(e) (iv), this office is availing itself of an extension of five working days – through and including August 22, 2016 – to respond to your request.

To the extent you consider this response to be a denial of your FOIA request, you have the right to submit a request for review by the Public Access Counselor (“PAC”) of the Office of the Illinois Attorney General to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

If you choose to submit a request for review, you must do so within 60 days after the date of this response letter. The request for review must be in writing, signed by you, and include a copy of your FOIA request and this office’s response. 5 ILCS 140/9.5(a). In addition, you have the right to seek judicial review of this response. 5 ILCS 140/11(a), (b).

Exhibit A

Sincerely,

A handwritten signature in black ink, enclosed in a red rectangular box. The signature appears to be "Christina McClernon".

Christina McClernon
Associate General Counsel, Freedom of Information Act Officer
Office of Governor Bruce Rauner, State of Illinois
JRTC, 100 W. Randolph St., Suite 16-100
Chicago, IL 60601

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STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
CAPITOL BUILDING, 207 STATE HOUSE
SPRINGFIELD, ILLINOIS 62706

BRUCE RAUNER
GOVERNOR

August 22, 2016

VIA EMAIL

Andrew Garrett
andrew.garrett.tcoa@gmail.com

Re: FOIA Request # 2016-187

Dear Mr. Garrett:

This letter is in response to your Illinois Freedom of Information Act (“FOIA”) request received on August 8, 2016 seeking, “any policy that is the basis for any agency requesting the assistance of the Governor's office in responding to FOIA requests.”

The Governor’s Office conducted a search and found a document potentially responsive to your request. Please be advised that this document is exempt from production under 5 ILCS 140/7(1)(m), which protects “[c]ommunications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation,” and under 7(1)(f), which exempts “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies are actions are formulated.” This document is exempt as attorney work product and as attorney-client communications which would not discoverable in litigation.

To the extent you consider this response to be a denial of your FOIA request, you have the right to submit a request for review by the Public Access Counselor (“PAC”) of the Office of the Illinois Attorney General to:

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Exhibit B

addition, you have the right to seek judicial review of this response. 5 ILCS 140/11(a), (b).

If you have any questions or need additional information, please contact me.

Sincerely,

A handwritten signature in black ink, enclosed in a red rectangular box. The signature appears to be "Christina McClernon".

Christina McClernon
Associate General Counsel/Freedom of Information Act Officer
Office of Governor Bruce Rauner, State of Illinois
JRTC, 100 W. Randolph St., Suite 16-100
Chicago, IL 60601