

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

KIRK ALLEN, JOHN KRAFT, and)
EDGAR COUNTY WATCHDOGS INC.)
)
PLAINTIFFS,)
)
vs.)
)
ALGONQUIN TOWNSHIP, and)
ALGONQUIN TOWNSHIP ROAD DISTRICT)
)
Defendants.)

Case No. 18 CH 238

**DEFENDANT, ALGONQUIN TOWNSHIP'S ANSWER TO
PLAINTIFF'S COMPLAINT AND AFFIRMATIVE DEFENSES**

DEFENDANT, ALGONQUIN TOWNSHIP, by and through its attorneys
MATUSZEWICH & KELLY, LLP and answers Plaintiff's Complaint as follows:

1. Pursuant to 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 ICS 140/1.

ANSWER: The allegation in Paragraph 1 requires no response as the statute speaks for itself. Further, Paragraph 1 should be stricken as it is surplusage.

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 governmental activity that affect the conduct of government and the lives of people. 5 ILCS 140/1.

ANSWER: The allegation in Paragraph 2 requires no response as the statute speaks for itself. Further, Paragraph 2 should be stricken as it is surplusage.

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.

ANSWER: The allegation in Paragraph 3 requires no response as the statute speaks for itself. Further, Paragraph 3 should be stricken as it is surplusage.

4. Under FOIA Section II (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."

ANSWER: The allegation in Paragraph 4 requires no response as the statute speaks for itself. Defendant denies the allegation in Paragraph 4 to the extent that it calls for conclusions conclusions of law.

PARTIES

5. Plaintiffs Allen, Kraft, and ECWI are the FOIA requesters in this case.

ANSWER: Defendant admits that Allen and Kraft are Plaintiffs to this Complaint. Defendant has insufficient information to either admit or deny that ECWI is a Plaintiff to this cause of action and therefore denies the allegation as to ECWI.

6. Defendants Algonquin Township and Algonquin Township Road District are public bodies located in McHenry County.

ANSWER: Defendant admits the allegation contained in Paragraph 6 as to Algonquin Township.

7. The records sought as set forth in each count are non-exempt public records of ALGONQUIN TOWNSHIP AND ALGONQUIN TOWNSHIP ROAD DISTRICT.

ANSWER: Defendant denies the allegations contained in Paragraph 7 of the Complaint.

8. ALGONQUIN TOWNSHIP AND ALGONQUIN TOWNSHIP ROAD DISTRICT willfully and intentionally violated FOIA by Defendant's ongoing and constant refusal to, and failure to properly respond to the FOIA requests shown in each count below and the Exhibits attached hereto and included herein.

ANSWER: Defendant denies the allegations contained in Paragraph 8.

9. The aforementioned paragraphs 1-8 incorporated in each of Counts I-XVI as if fully restated therein in each count.

ANSWER: Defendant incorporates by reference their answers to Paragraphs 1-8 herein.

COUNT I F.O.I.A Request #1

10. On November 10, 2017, Plaintiff Kraft, using the e-mail address john@illinoisleaks.com, requested information concerning the public body by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit A.

ANSWER: Defendant admits the allegation in Paragraph 10 only to the extent to Exhibit A appears to be a Freedom of Information Act Request sent to Karen Lukasik the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

11. On November 17, 2017, Defendant, Algonquin Township, responded by indicating that the requested public records were prohibited from disclosure by a protective order of the 22nd Judicial Circuit Court, and that disclosure would constitute an unwarranted invasion of privacy. See Exhibit B.

ANSWER: Defendants admits the allegation in Paragraph 11 that the information sought was exempt from disclosure pursuant to 5 ILCS 140 /7(1)(a) and 5 ILCS 140/7 (1)(c) .

12. On November 17, 2017, Plaintiff Kraft responded and asked for a copy of the alleged Protective Order. See Exhibit C.

ANSWER: Defendant admits the allegation in Paragraph 12.

13. On November 26, 2017, Defendant's attorney responded by providing a copy of Protective Order dated June 8, 2017. See Exhibit D.

ANSWER: Defendant admits the allegation in Paragraph 13.

14. On November 26, 2017, Plaintiff Kraft responded again for further information related to the alleged Protective Order. See Exhibit E.

ANSWER: Defendant admits the allegation in Paragraph 14.

15. On November 26, 2017, Defendant's attorney again responded, this time include two separate Orders, dated June 8, 2017 or November 7, 2017. See Exhibit F.

ANSWER: Defendant admits the allegation in Paragraph 15.

16. Upon review of the alleged protective orders, it is not clear that the requested records are prohibited from disclosure under the protective orders of June 8, 2017 or November 7, 2017.

ANSWER: Defendant denies the allegation contained in Paragraph 16 as it has insufficient information to either admit or deny the allegation.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT II
F.O.I.A. Request #2

17. On November 10, 2017, Plaintiff, Kraft, using the e-mail address john@illinoisleaks.com, requested information along with a clarification of the request,

Defendant, Algonquin Township's Answer to Plaintiff's Complaint and Affirmative Defenses
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concerning the public body by e-mailing Karen Lukasik at klukasik@algonquin township.com. See Exhibit G.

ANSWER: Defendant admits the allegation in Paragraph 17 only to the extent to Exhibit G appears to be a Freedom of Information Act Request sent to Karen Lukasik the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

18. Defendant responded by indicating that no responsive records were found. See Exhibit H.

ANSWER: Defendant admits the allegation in Paragraph 18.

19. On November 22, 2017, Plaintiff Kraft responded asking Defendant if she asked the person who purchased them and indicated that the credit card company should have the receipt, and asked Plaintiff to ask the credit card company for a copy. See Exhibit I.

ANSWER: Defendant admits the allegation in Paragraph 19.

20. On November 22, 2017, Defendant responded stating that it was not required to obtain a copy from the credit card company and failed to state whether or not it asked the person who purchased the item(s) if that person had the receipt. See Exhibit J.

ANSWER: Defendant admits the allegation in Paragraph 20.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT III
F.O.I.A. Request #3

21. On November 13, 2018, Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com. Requested information concerning the public body as shown in Exhibit K by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit K.

ANSWER: Defendant admits the allegation in Paragraph 21 only to the extent to Exhibit G appears to be a Freedom of Information Act Request sent to Karen Lukasik the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

22. Karen Lukasik responded January 6th, 2018, beyond the 5 day time frame indicating the request was unduly burdensome. See Exhibit L. Such an exemption is improper as the public body failed to comply with 5 ILCS 140/3(d), (g).

ANSWER: Defendant admits that Exhibit L appears to be an e-mail sent by the Clerk's office. Defendant denies the remainder of the allegation in Paragraph 22 that the exemption asserted was improper, as this allegation calls for a legal conclusion. Defendant further denies that the body failed to comply with the Freedom of Information Act.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT IV
F.O.I.A. Request #4

23. On November 13, 2018, Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com . Requested information concerning the public body as shown in Exhibit M by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit M.

ANSWER: Defendant admits the allegation in Paragraph 23 only to the extent to Exhibit M appears to be a Freedom of Information Act Request sent to Karen Lukasik the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

24. Karen Lukasik responded November 22, 2107, beyond the permitted time frame with a response that misrepresented the request made by Kirk Allen. See Exhibit N.

ANSWER: Defendant admits she sent an email on November 22, 2018 and denies the remainder of the allegation in Paragraph 24 as it calls for a legal conclusion.

25. On November 23, 2017, Kirk Allen responded to the misrepresentations made by Lukasik in the response to the request. See Exhibit N.

ANSWER: Defendant denies the allegation in Paragraph 25 as it calls for a legal conclusion.

26. Karen Lukasik responded November 25, 2017 with claimed misunderstandings to the original request. See Exhibit N.

ANSWER: Defendant admits that Algonquin Township Clerk responded on November 25, 2017, asserting a misunderstanding to requestor's request.

27. At the time of this filing, items numbered 1 and 2 of the FOIA request have not been provided.

ANSWER: Defendant admits the allegation in Paragraph 27 and further states that the documents sought pursuant to Paragraph 1 and 2 of the Freedom of Information Act request were not in the possession of the Defendant at the time of the request.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT V
F.O.I.A. Request #5

28. On November 13, 2017, Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com requested information concerning the public body as shown in Exhibit O by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit O.

ANSWER: Defendant admits the allegation in Paragraph 28 only to the extent to Exhibit O appears to be a Freedom of Information Act Request sent to Karen Lukasik the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

29. On January 3rd, 2018 Karen Lukasik sent an email acknowledging outstanding FOIA requests. See Exhibit P.

ANSWER: Defendant admits the allegation in Paragraph 29 to the extent that Exhibit P appears to be an e-mail sent by Karen Lukasik.

30. On January 3rd, 2018, Kirk Allen once again provided the same FOIA request (Exhibit O) as no response to that request had been made. See Exhibit Q.

ANSWER: Defendant admits the allegation in Paragraph 30 to the extent that Exhibit Q appears to be an e-mail from Kirk Allen.

31. On January 6th, 2018, Karen Lukasik responded indicating there were no records and did so outside the established five day statutory deadline. See Exhibit R.

ANSWER: Defendant admits the allegation in Paragraph 31 to the extent that there were no records responsive to the request, and denies any conclusions that the response was untimely or in violation of the Freedom of Information Act.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT VI
F.O.I.A. Request #6

32. On November 13th, 2017, Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com requested information concerning the public body as shown in Exhibit S by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit S.

ANSWER: Defendant admits the allegation in Paragraph 32 only to the extent to Exhibit S appears to be a Freedom of Information Act Request sent to Karen Lukasik the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

33. After no response from the public body, Kirk Allen sent the same request (Exhibit S) to klukasik@algonquintownship.com on January 3rd, 2018. See Exhibit T.

ANSWER: Defendant denies the statement that after no response from the public body Kirk Allen sent the same request. Defendant admits to the allegation in Paragraph 33 to the extent that Exhibit T appears to be a request sent to the Algonquin Township Clerk.

34. On January 6th, 2018, Karen Lukasik responded claiming the request was not received until January 3rd, 2018 and that it was unduly burdensome. Such an exemption is improper as the public body failed to comply with 5ILCS 140/3(d), (g). See Exhibit U.

ANSWER: Defendant admits the allegation in Paragraph 34 to the extent that on January 6, 2018, Karen Lukasik the Algonquin Township Clerk responded to Plaintiffs' Freedom of Information Act request. Defendant denies the conclusion that the exemption cited in the response is improper or untimely.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT VII
F.O.I.A. Request #7

35. On November 27th, 2017, Kirk Allen using the e-mail address Kirk@Illinoisleaks.com requested information concerning the public body as shown in Exhibit V by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit V.

ANSWER: Defendant admits the allegation in Paragraph 35 to the extent that Exhibit V appears to be a Freedom of Information Act Request sent to Karen Lukasik, the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

36. Mary Ann Selvey, a legal assistant, responded to the request on January 12, 2018. See Exhibit W.

ANSWER: Defendant admits the allegation in Paragraph 36 to the extent that Exhibit W appears to be an e-mail.

37. Attached to Exhibit W is a letter in which the Attorney for the Public Body is responding on behalf of the public body. (See Exhibit X). The law does not permit a contracted attorney for the public body to be the FOIA officer for the public body. FOIA officers are to be designated by the public body. (Sec. 3.5) The attorney cited exemptions for denial even though portions of the request are subject to FOIA.

ANSWER: Defendant denies the allegation in Paragraph 37. Defendant admits that the last sentence in the Paragraph reflects that an exemption was cited for the denial of the Plaintiff's request.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT VIII
F.O.I.A. Request #8

38. On November 13, 2017 Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com requested information concerning the public body as shown in Exhibit Y by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit Y.

ANSWER: Defendant admits the allegation in Paragraph 38 to the extent that Exhibit Y appears to be a Freedom of Information Act request from Kirk Allen to the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

39. After no response and claims the FOIA request was not received, Kirk Allen, using the email address Kirk@illinoisleaks.com forwarded his original request (Exhibit Y), on January 3rd, 2018 to Karen Lukasik at klukasik@algonquintownship.com. See Exhibit Z.

ANSWER: Defendant denies the allegation in Paragraph 39 that no response to the claim was received, as Defendant has insufficient information to either admit or deny the allegation. Defendant admits that Plaintiff forwarded a copy of the original request at Exhibit Y to Karen Lukasik, the Algonquin Township Clerk.

40. On January 6th, 2018, Karen Lukasik responded in an email denying the request as unduly burdensome. Such an exemption is improper as the public body failed to comply with 5 ILCS 140/3(d), (g). See Exhibit AA.

ANSWER: Defendant admits the allegation contained in Paragraph 40 that on January 6, 2018 Karen Lukasik responded to an e-mail FOIA request by denying the request as unduly burdensome. Defendant denies the conclusion that such exemption was improper.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT IX
F.O.I.A Request #9

41. On November 29, 2017 Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com, requested information concerning the public body as shown in Exhibit AB by e-mailing Karen Lukasik at klukasik@algonquintownship.com . See Exhibit AB.

ANSWER: Defendant admits that the allegation in Paragraph 41 to the extent that Exhibit AB appears to be a Freedom of Information Act request submitted to the Karen Lukasik, the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

42. Karen Lukasik responded on December 6th 2017 indicating there were not documents responsive to the request. See Exhibit AC. Such a statement is inconsistent with video evidence substantiating Karen Lukasik did in fact remove records from at least one office. The video contravening the assertions of Karen Lukasik is available at:

https://www.youtube.com/watch?time_continue=2&v=Qoaa5C1hPKk

ANSWER: Defendant admits to the portion of Paragraph 42 that the Algonquin Township Clerk, Karen Lukasik responded on December 6, 2017 Freedom of Information Act Request that there were no responsive documents. Defendant denies the remainder of the allegation.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT X
F.O.I.A. Request #10

43. On December 6, 2017, Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com requested information concerning the public body as shown in Exhibit AD by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit AD.

ANSWER: Defendant admits the allegation in Paragraph 43 to the extent that Exhibit AD appears to be a Freedom of Information Act Request sent to Karen Lukasik, the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

44. On December 13th, 2017, Natalie Pesin, an attorney who is not the FOIA officer for the Township or Township Road District, sent an email extending the time for compliance and stated the records would be provided December 20, 2017. See Exhibit AE

ANSWER: Defendant admits the allegation in Paragraph 44 to the extent that Natalie Pesin sent an e-mail extending the time for compliance and denies all of the remaining allegations and conclusions therein.

45. On January 3rd, 2018 well after the deadline for receipt of records established by a lawyer for the Township, Kirk Allen sent an email to the attorney requesting information on the Township's intentions for numerous overdue FOIA requests. See Exhibit AF

ANSWER: Defendant admits the allegation in Paragraph 45 to the extent that Exhibit AF appears to be an e-mail from Plaintiffs. Defendant denies the remainder of the allegation and all conclusions and inferences in Paragraph 45.

46. On January 11th, 2018 well past due the date for compliance under FOIA, Karen Lukasik responded providing records for one part of the request, denying existence of records in the second part. See Exhibit AG

ANSWER: Defendant denies the allegation in Paragraph 46 as it has insufficient information to either admit or deny the allegation.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT XI
F.O.I.A. Request #11

47. On December 17, 2017, Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com requesting information concerning the public body as shown in Exhibit AE by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit AH.

ANSWER: Defendant admits the allegation in Paragraph 47 to the extent that Exhibit AH appears to be a Freedom of Information Act Request sent to Karen Lukasik, the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

48. Karen Lukasik responded on January 4th, well past the legal time frame for responding to a FOIA request and stated there were no responsive documents for the Township Supervisor and Township Clerk but makes no reference to the Highway Commissioner possessing the requested records. See Exhibit AI. Such a statement is inconsistent with video evidence substantiating the existence of such records. The video contravening the assertions of Karen Lukasik is available at:

https://www.youtube.com/watch?time_continue=2&v=Qoaa5C1hPKk

ANSWER: Defendant admits the allegation in Paragraph 48 that Karen Lukasik responded to a Freedom of Information Act request. Defendant denies the remainder of the allegations in Paragraph 48.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT XI
F.O.I.A. Request #12

49. On December 18, 2017, Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com requested information concerning the public body as shown in Exhibit AJ by e-mailing Karen Lukasik at kukasik@algonquintownship.com. See Exhibit AJ.

ANSWER: Defendant admits the allegation in Paragraph 49 to the extent that Exhibit AJ appears to be a Freedom of Information Act Request sent to Karen Lukasik, the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

50. On January 3, 2018, Kirk Allen, once again has to resend his request as the public body made claims they never received it. See Exhibit AK

ANSWER: Defendant denies this allegation as it has insufficient information to either admit or deny the allegation.

51. On January 11, 2018, Karen Lukasik responded with a partial production that included a link to requested emails. See Exhibit AL

ANSWER: Defendant admits the allegation to the extent that Karen Lukasik, the Algonquin Township Clerk responded to FOIA request. Defendant denies any conclusions drawn therefrom.

52. On January 17, 2018, as established in the Freedom of Information Act, Kirk Allen resubmitted his request because of the inability to reasonably access the records at the link provided. See Exhibit AM.

ANSWER: Defendant admits the allegation in Paragraph 52 to the extent that Kirk Allen submitted a request at Exhibit AM.

53. On January 22, 2018 Karen Lukasik responded with instructions how to open the files and that if that did not work she would copy them to a disk and mail them. See Exhibit AN.

ANSWER: Defendant admits the allegation in Paragraph 53 to the extent that Karen Lukasik responded to the Plaintiff's request as to how to open the files she had sent Plaintiff.

54. On January 22, 2018, Kirk Allen requested Karen Lukasik to mail the requested information. This request was based on the fact that the records were not reasonably accessible at the link provided. See Exhibit AO

ANSWER: Defendant admits the allegation in Paragraph 54 that Plaintiff requested the information be mailed. Defendant denies the remainder of the allegation that their records were not reasonable accessible at the link provided.

55. To date, the public body has yet to provide the requested records to Kirk Allen.

ANSWER: Defendant denies the allegation in Paragraph 55.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT XIII
F.O.I.A. Request #13

56. On January 19th, 2018, Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com requested information concerning the public body as shown in Exhibit AP by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit AP

ANSWER: Defendant admits the allegation in Paragraph 56 to the extent that Exhibit AP appears to be a Freedom of Information Act Request sent to Karen Lukasik, the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

57. To date the public body has not responded to Kirk Allen's FOIA request found in Exhibit AP.

ANSWER: Defendant denies the allegation in Paragraph 57.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT XIV
F.O.I.A. Request #14

58. On January 19th 2018, Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com requested information concerning the public body as shown in Exhibit AQ by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit AQ.

ANSWER: Defendant admits the allegation in Paragraph 58 to the extent that Exhibit AQ appears to be a Freedom of Information Act Request sent to Karen Lukasik, the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

59. To date the public body has not responded to Kirk Allen's FOIA request found in Exhibit AQ.

ANSWER: Defendant denies the allegation in Paragraph 59.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

COUNT XV
F.O.I.A. Request #15

60. On January 3rd, 2018 Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com requested information concerning the public body as shown in Exhibit AR by e-mailing Karen Lukasik at klukasik@algonquintownship.com. See Exhibit AR.

ANSWER: Defendant admits the allegation in Paragraph 60 to the extent that Exhibit AR appears to be a Freedom of Information Act Request sent to Karen Lukasik, the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

61. To date the public body has not responded to Kirk Allen's FOIA request found in Exhibit AR.

ANSWER: Defendant denies the allegation in Paragraph 61.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs

COUNT XVI
F.O.I.A. Request #16

62. On January 17, 2018 Kirk Allen, using the e-mail address Kirk@Illinoisleaks.com re-submitted his FOIA request found in Exhibit AJ due to the responsive records not being reasonable accessible. That re-submitted request was done in accordance with the obligations under the Freedom of Information Act. See Exhibit AS

ANSWER: Defendant admits the allegation in Paragraph 62 to the extent that Exhibit AS appears to be a Freedom of Information Act Request sent to Karen Lukasik, the Algonquin Township Clerk. Defendant denies any inferences or conclusions arising for this allegation.

63. To date the public body has not responded to Kirk Allen's FOIA request found in Exhibit AS.

ANSWER: Defendant denies the allegation in Paragraph 63.

WHEREFORE, Defendant respectfully request that this Honorable Court enter Judgment in favor of Defendant and against Plaintiffs.

AFFIRMITIVE DEFENSES

Defendant, ALGONQUIN TOWNSHIP, asserts the following affirmative defenses:

RELEVANT FACTS

1. On May 15, 2017 the term of office began for the Township Supervisor, all four (4) Township Trustees, the Township Clerk, and the Township Highway Commissioner.
2. All of elected officers who took office on May 15, 2018 were new to these offices except for one Township Trustee.
3. On June 1, 2017, the Algonquin Township Highway Commissioner filed a lawsuit against the township clerk, the former township highway commissioner and Anna Mae Miller (hereinafter the "Gasser Suit") alleging "To date, Miller has turned over absolutely no substantive records of the Algonquin Highway Department" ¶ 7, further that electronic and paper records were missing from the Road District. *Andrew Gasser v. Karen Lukasik, individually and in her capacity as Algonquin Township Clerk, Anna Mae Miller and Robert Miller*, Case Number 17 CH 435.
4. The Gasser Suit sought to an injunction to prevent the destruction of Road District and Township records.

5. On June 8, 2017 Karen Lukasik, the Algonquin Township Clerk filed a Counter Claim against Andrew Gasser, the Algonquin Township Highway Commissioner, and Charles Lutzow, the Algonquin Township Supervisor, in the Gasser Suit, alleging that Township records were taken from the Clerk's office and possibly destroyed. Karen Lukasik further sought a temporary restraining order.

6. On June 8, 2017 a Temporary Restraining Order and Protective order were entered effectively restraining all parties from destroying or tampering with Township records. See Exhibit A and B.

7. On July 5, 2017 Karen Lukasik filed an Emergency Motion for Leave to File a Verified Count II to Counter-Complaint and Third Party Complaint and Motion for Issuance of Temporary Restraining Order and Preliminary Injunction.

8. On July 5, 2017 a Temporary Restraining Order was entered granting Karen Lukasik "unfettered access" to Township and Road District Records amongst other things. Exhibit C.

9. On July 14, 2017 the court entered a Preliminary Injunction Order granting Karen Lukasik "unfettered access" to Township and Road District records amongst other things. Exhibit D.

10. On information and belief, on or about July 14, 2017 after the entry of the Preliminary Injunction Order the Algonquin Township Highway Commissioner, with no notice to the Township Clerk, piled Road District records in the hallway in front of the Township Clerk's office. These official records were left unsecured in a space open to the public.

11. On information and belief sometime between May 5, 2017 and June 1, 2017, unauthorized access was made to the Algonquin Township Clerk's office and records were removed.

12. On January 15, 2018, the Plaintiffs' published on their web site video taken from a Township security camera in the Supervisor's office showing the Clerk in the Supervisor's office. The video was not in the custody, control or possession of the Township Clerk at any point in time.

13. On information and belief the video published on the Plaintiffs' web site on January 15, 2018 showing the Clerk in the Supervisor's office was at one point in the possession of the Highway Commissioner.

14. On information and belief the Township Clerk has demanded a copy of the video published on the Plaintiffs' web site on January 15, 2018 showing the Clerk in the Supervisor's office from the Highway Commissioner.

15. Further, numerous records of the Township and Road District are in the possession of 3rd parties and not accessible to the Township.

16. On information and belief documents have been removed from the Township without lawful authority and are not in the control and custody of the Township and Road District Clerk.

17. The Township and Road District records are voluminous, many of which are stored in bankers boxes on pallets on a two story pallet rack.

18. From May 15, 2017 to approximately January 10, 2018 the Township Clerk, did not have employees or support staff.

19. The Township Clerk position has limited duties at the Township and was scheduled to be at the Township for the regular monthly meeting, bid openings, and one afternoon per week.

COUNT I

Unavailability of Records

20. Defendant incorporates by reference Paragraphs 1-19 of its Affirmative Defenses.

21. Numerous records sought by Plaintiffs are not in the custody of the Township Clerk. It is therefore impossible to provide some of the records requested.

22. Plaintiff sought security camera footage in its request of November 10, 2017.

23. On January 15, 2018, Plaintiffs' published the security camera footage sought by the Plaintiffs' in their November 10, 2017 request although the footage was never in the Township Clerk's control, custody or possession.

24. Plaintiffs' November 13, 2017 request for Open Meeting Act certificates was impossible to fulfill in that these records were secured in the Clerk's office but were missing on the date of the November 13, 2017 request. It was therefore impossible to comply with the Plaintiffs' request for these records as they are were no longer in the possession of the Township Clerk.

WHEREFORE, Defendant prays that this honorable Court enter a judgment in Defendant's favor and against the Plaintiffs, and for any other relief which is just and fit.

COUNT II

Requests are Unduly Burdensome

Defendant incorporates by reference Paragraphs 1-19 of its Affirmative Defenses.

25. Plaintiffs Freedom of Information requests in many instances are overly burdensome seeking specific documents over multiple years.

26. The custodian of the township records, prior to January 2018, had no support staff to fulfill the Plaintiffs' requests other than Karen Lukasik who was scheduled to be at the Township only one afternoon per week.

27. The numerous and complex records requests substantially interfered with the operation of the Clerk's office and were virtually impossible to complete.

WHEREFORE, Defendant prays that this honorable Court enter a judgment in Defendant's favor and against the Plaintiffs, and for any other relief which is just and fit.

COUNT III
Exemptions

28. Defendant incorporates by reference Paragraphs 1-19 of its Affirmative Defenses.

29. Plaintiff's requests found in Exhibit A and K of Plaintiffs' Complaint are subject to statutory exemptions, 5 ILCS 140 /7(1)(a) and 5 ILCS 140/7 (1)(c). Further, the Court in the Gasser Suit has determined that the video sought was subject to a Protective Order and the video only be available to the parties to the Gasser Suit.

WHEREFORE, Defendant prays that this honorable Court enter a judgment in Defendant's favor and against the Plaintiffs, and for any other relief which is just and fit.

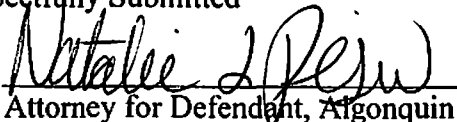
COUNT IV
Consent

30. Defendant incorporates by reference Paragraphs 1-19 of its Affirmative Defenses.

31. Plaintiff consented to providing delayed responses to its Freedom of Information Act requests on numerous occasions, including its November 13, 2017 request, Exhibit M, and its request in Plaintiffs' Exhibit Q.

WHEREFORE, Defendant prays that this honorable Court enter a judgment in Defendant's favor and against the Plaintiffs, and for any other relief which is just and fit.

Respectfully Submitted


By: 
Attorney for Defendant, Algonquin Township

James P. Kelly, ARDC # 6208284
MATUSZEWICH & KELLY, LLP
101 N. Virginia St., Suite 150
Crystal Lake, Illinois 60014
(815) 459-3120 Telephone
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Defendant, Algonquin Township's Answer to Plaintiff's Complaint and Affirmative Defenses
Page 16 of 17

VERIFICATION

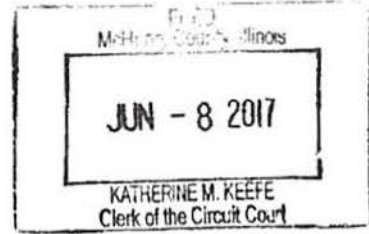
Under penalties of perjury as provided by law pursuant to Section 1-109 of the code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matter therein stated to be on information and belief and, as to such matter, the undersigned certifies as aforesaid that he verily believe the same to be true.



Charles Lutzow, Algonquin Township
Supervisor

IN THE CIRCUIT COURT OF 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

Andrew Gasser,)	
Plaintiff)	
v.)	
Karen Lukasik, Individually and in her)	
Capacity as Algonquin Township Clerk;)	
Anna May Miller; and Robert Miller)	
Defendants,)	
Karen Lukasik, Individually and in her)	
Capacity as Algonquin Township Clerk;)	
Anna May Miller; and Robert Miller)	
Defendants/Counter-Plaintiffs,)	
v.)	
Andrew Gasser,)	
Plaintiff/Counter-Defendant,)	
Karen Lukasik, Individually and in her)	
Capacity as Algonquin Township Clerk,)	
Defendant/Third Party Plaintiff)	
v.)	
Charles Lutzow,)	
Third Party Defendant)	



Case No. 17 CH 435

TEMPORARY RESTRAINING ORDER, WITH NOTICE

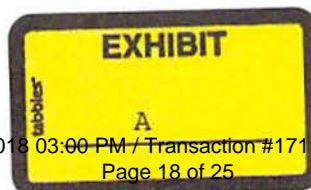
This matter coming before the Court on Counter-Plaintiff's Motion for Temporary Restraining Order, and the Court having been fully advised in the premises, hereby find that:

1. Notice of Karen Lukasik's Motion for Temporary Restraining Order was provided to counsel for all Counter Defendants and Third-Party Defendants during the morning of June 8, 2017 and all counsel were present in court.

2. If a Temporary Restraining Order is not granted in this matter, the following injuries will occur:

- a. Algonquin Township's security camera(s) footage of the relevant timeframe will automatically be deleted.
- b. Algonquin Township's relevant photocopier computer hard drives and the data contained thereon may be deleted if not preserved.
- c. Algonquin Township's server and stand-alone scanner in LUTZOW's office may be deleted if not preserved.

3. If the above referenced public records are deleted, irreparable harm will occur as those records may be lost forever.



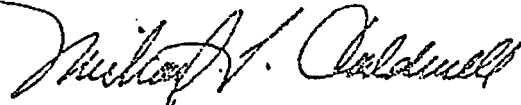
4. Third Party Defendant LUTZOW is named Third Party Defendant, in his capacity as Nunda Township Supervisor, not individually.

5. The court having read the pleadings, heard arguments from all counsel and being otherwise advised:

IT IS HEREBY ORDERED AS FOLLOWS:

- 1) A Temporary Restraining Order is hereby entered restraining all persons including, but not limited to, Counter Defendant Andrew GASSER and Third Party Defendant LUTZOW from tampering with, destroying and/or allowing the tampering with or destruction of the video camera(s) security footage before the relevant footage is destroyed.
- 2) The Court orders that Karen Lukasik retain the services of Chris Welky of Ace Security Works, or any other independent computer technician approved by this court, to access, secure, and copy the video camera(s) security footage of the Algonquin Township offices between the dates of May 5, 2017 through June 1, 2017.
- 3) A Temporary Restraining Order is hereby entered restraining all persons including Counter Defendants GASSER and LUTZOW from tampering with or destroying any and all Algonquin Township photocopier computer hard drives.
- 4) The Court orders Karen Lukasik to retain the services of an independent photocopier technician approved by this court, to access, secure, and copy the photocopier computer hard drives within the Algonquin Township offices between the dates of May 5, 2017 through June 1, 2017.
- 5) A Temporary Restraining Order is hereby entered restraining all person including Counter Defendants GASSER and LUTZOW from tampering with or destroying, any and all Algonquin Township servers that contain scanned Township bills or other records and the stand-alone scanner in LUTZOW's office.
- 6) Summonses to issue as to Third Party Defendant LUTZOW.

ENTERED:



Judge

Jacob D. Caudill, Attorney No. 06320420

jcaudill@zrfmlaw.com

David W. McArdle, Attorney No. 06182127

dmcardle@zrfmlaw.com

R. Mark Gummerson

mgummerson@zrfmlaw.com

Zukowski, Rogers, Flood & McArdle

Attorneys for Counter-Plaintiff Karen Lukasik

50 Virginia Street, Crystal Lake, Illinois 60014

(815) 459-2050

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 17 CH 435
 Jury Non-Jury

Andrew Gasser
VS
Karen Lukasik
VS
Charles Lutzow

VS.



Date: 6-8-17 Plaintiff's Attorney HANLON

Defendant's Attorney Goacht ZR F&MC

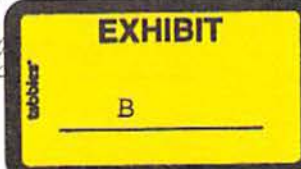
ORDER

This Cause coming onto be heard upon Defendant/Counter Plaintiff, Karen Lukasik, notice having been given and a Verified Complaint having been filed and the Court hearing arguments and being advised in the premises:

IT IS ORDERED that Attorney Joe Gottmoller is appointed by the Court as Receiver to engage the services of a qualified individual or individuals to secure a copy of the videos at Algonquin township as well as copies of any and all hard-drives from all photocopies and scanners at Algonquin township and Mr. Gottmoller shall provide copies of same to all Counsel of Record and shall notice up same to the Court and a protective order is entered that no distribution of the information will be made outside of this litigation, unless given leave of Court.

Prepared by: SUMMERSON
Attorney for: Karen Lukasik
Attorney Registration No.: 312613.5

Judge: [Signature]
The attorney and parties to



IN THE CIRCUIT COURT OF 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS



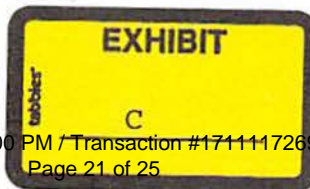
Andrew Gasser,)
Plaintiff)
v.)
Karen Lukasik, Individually and in her)
Capacity as Algonquin Township Clerk;)
Anna May Miller; and Robert Miller)
Defendants.)
Karen Lukasik, Individually and in her)
Capacity as Algonquin Township Clerk;)
Anna May Miller; and Robert Miller)
Defendants/Counter-Plaintiffs,)
v.)
Andrew Gasser,)
Plaintiff/Counter-Defendant.)
Karen Lukasik, Individually and in her)
Capacity as Algonquin Township Clerk,)
Defendant/Third Party Plaintiff)
v.)
Charles Lutzow in his capacity as Algonquin)
Township Supervisor,)
Third Party Defendant)

Case No. 17 CH 435

TEMPORARY RESTRAINING ORDER, WITH NOTICE

This matter coming before the Court on Counter-Plaintiff's Motion for leave to File her Count II to her Counter-Complaint and Third Party Complaint filed on June 8, 2017 and her Motion for Issuance of a Second Temporary Restraining Order and Preliminary Injunction, and the Court having been fully advised in the premises, hereby finds that:

1. Notice of Karen Lukasik's Motion for Temporary Restraining Order was provided to counsel for all Counter Defendants and Third-Party Defendants during the morning July 5, 2017 and all counsel were present in court.
2. If a Temporary Restraining Order is not granted in this matter, Township Records that are not within the full custody and control of the duly elected clerk, Lukasik, may be removed, altered, lost or destroyed.
3. If the above-referenced public records are removed, altered, or destroyed, irreparable harm will occur as those records may be lost forever.
4. The court having read the pleadings, heard arguments from all counsel and being otherwise advised.

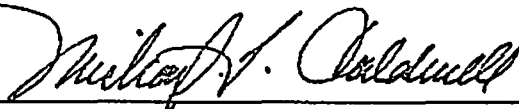


5. It is Hereby Ordered as Follows:

- A. Counter-Plaintiff, Karen Lukasik is given leave to file her proposed Count II to her Counter-Complaint and Third Party Complaint filed on June 8, 2017, instanter;
- B. That a Temporary Restraining Order ~~and Preliminary Injunction~~ is hereby entered against Counter Defendants Gasser and Lutzow pursuant to 735 ILCS 5/11-102 prohibiting ^{CASEY} each of them and ^{his} their employees from denying Lukasik full unfettered access to and custody of all records of Algonquin Township and the Algonquin Township Highway Department at all times for purposes of inventory and security as required by law; and
- C. That Counter Defendant ~~Gasser and Lutzow~~, and ^{his} their employees, shall cooperate in producing files to Lukasik that are out of her reach.
- D. *Hearing on this Temporary Restraining Order is set for July 14, 2017 at 1:30 p.m.*

Date Entered: July 5, 2017

Time Entered: 2:05 pm



Judge

Prepared by:

David W. McArdle, Atty. No. 06182127

dmcardle@zrfmlaw.com

Zukowski, Rogers, Flood & McArdle

Attorneys for Counter-Plaintiff Karen Lukasik

50 Virginia Street

Crystal Lake, Illinois 60014

(815) 459-2050

Z:\A\LukasikKaren\Pleadings\TRO OrderAmCmplt.1.docx

**IN THE CIRCUIT COURT OF 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS**

Andrew Gasser,)
 Plaintiff)
 v.)
 Karen Lukasik, Individually and in her)
 Capacity as Algonquin Township Clerk;)
 Anna May Miller, and Robert Miller)
 Defendants,)
 _____)
 Karen Lukasik, Individually and in her)
 Capacity as Algonquin Township Clerk;)
 Anna May Miller, and Robert Miller)
 Defendants/Counter-Plaintiffs,)
 v.)
 Andrew Gasser,)
 Plaintiff/Counter-Defendant,)
 _____)
 Karen Lukasik, Individually and in her)
 Capacity as Algonquin Township Clerk,)
 Defendant/Third Party Plaintiff)
 v.)
 Charles Lutzow, not individual, but in his Official)
 Capacity as Township Highway Supervisor)
 Third Party Defendant)

Case No. 17 CH 435

TO: Robert T. Hanlon
 Law Offices of Robert T.
 Hanlon & Associates, P.C.
 131 E. Calhoun Street
 Woodstock, IL 60098
rob@rhanlonlaw.com
robert@robhanlonlaw.com

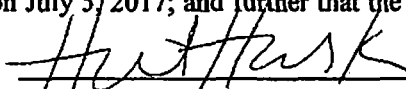
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 The Gooch Firm
 209 S. Main Street
 Wauconda, IL 60084
office@goochfirm.com

James P. Kelly
 101 N. Virginia Street
 Crystal Lake, IL 60014
jpkelly@mkm-law.com

Steven J. Brody
 Steven J. Brody & Associates, Ltd.
 15 W. Woodstock Street
 Crystal Lake, IL 60014
steve@sjbrodylaw.com
service@sjbrodylaw.com

PROOF OF SERVICE

The undersigned, a non-attorney, certifies, under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, that she served this July 5, 2017 Order by email transmission to the addresses, at the email addresses shown above on July 5/2017; and further that the statements set forth in this Proof of Service are true and correct.



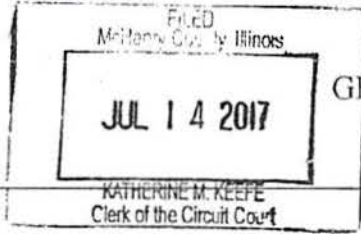
 Helen A. Harkins

David W. McArdle, Atty. No. 06182127
dmcardle@zrfmlaw.com
 Zukowski, Rogers, Flood & McArdle
 Attorneys for Counter-Plaintiff Karen Lukasik
 50 Virginia Street, Crystal Lake, Illinois 60014
 (815) 459-2050

300001

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)



GEN. NO. 17 CH 435
 Jury Non-Jury

Gasser vs Lukasik et al vs Gasser et al

Date: 7-14-17

Plaintiff's Attorney HANLON

Defendant's Attorney ZRF & Mc

ORDER

Goach
Brody

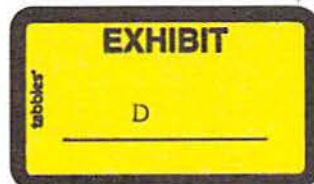
This Cause coming on to be heard for hearing for a Preliminary INJUNCTION and the Court making a finding for purposes of issuing a Preliminary INJUNCTION that irreparable harm to the public may occur without the issuance of a Preliminary INJUNCTION and that there is a likelihood of success on the merits and there is no adequate remedy at law and the bond is waived and therefore the preliminary injunction shall issue until further Order of Court → cont'd p.2

Prepared by: _____

Attorney for: _____

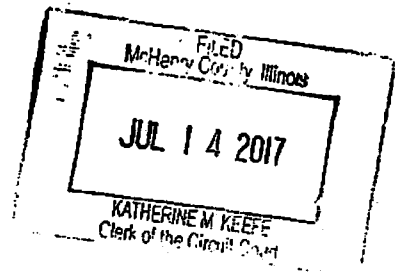
Attorney Registration No.: _____

Judge: [Signature]



Schoon

IN THE CIRCUIT COURT OF 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS



Andrew Gasser,)
 Plaintiff)
 v.)
 Karen Lukasik, Individually and in her)
 Capacity as Algonquin Township Clerk;)
 Anna May Miller; and Robert Miller)
 Defendants.)

Karen Lukasik, Individually and in her)
 Capacity as Algonquin Township Clerk;)
 Anna May Miller; and Robert Miller)
 Defendants/Counter-Plaintiffs,)
 v.)
 Andrew Gasser,)
 Plaintiff/Counter-Defendant.)

Karen Lukasik, Individually and in her)
 Capacity as Algonquin Township Clerk,)
 Defendant/Third Party Plaintiff)
 v.)
 Charles Lutzow in his capacity as Algonquin)
 Township Supervisor,)
 Third Party Defendant)

Case No. 17 CH 435

PRELIMINARY INJUNCTION ORDER

This matter coming before the Court on Counter-Plaintiff's Motion for Preliminary Injunction, and the Court having been fully advised in the premises, hereby orders as follows:

1. A Preliminary Injunction is hereby entered against Counter Defendants Gasser and Lutzow pursuant to 735 ILCS 5/11-102 prohibiting each of them and their employees from a) denying Lukasik full unfettered access to and custody of all records of Algonquin Township and the Algonquin Township Highway Department at all times for purposes of inventory, storage and security as required by law; and b) prohibiting Gasser and Lutzow from changing Township building access keys or codes to buildings/rooms where Township records are located.

Without providing duplicate keys and code numbers to LUKASIK immediately.

2. That Counter Defendants Gasser and Lutzow, and their employees, shall cooperate in producing files to Lukasik that are out of her reach.

3. Lutzow shall recommend to the Board of Trustees of Algonquin Township that it provide to Lukasik a building or an areas within one or more Township buildings to reasonably secure the township records within her jurisdiction to which only the Clerk and her designee(s) shall have access.

Date Entered: July 14, 2017 Michael H. Cardwell
 Judge

Prepared by:
 David W. McArdle, Atty. No. 06182127
dmcardle@zrfmlaw.com
 Zukowski, Rogers, Flood & McArdle
 Attorneys for Counter-Plaintiff Karen Lukasik
 50 Virginia Street, Crystal Lake, Illinois 60014

P. 2 of 2