

MEEHLING & BERNARDONI

ATTORNEYS AT LAW

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Richard J. Bernardoni

William F. Meehling
Retired

November 6, 2012

Karen D. Halloran
Edgar County Circuit Clerk
Edgar County Courthouse
115 West Court Street
Paris, IL 61944

KRAFT v. CLARK-EDGAR RURAL WATER DISTRICT et al
12-MR-44

Enclosed please find a Motion to Dismiss with the above cause. Please file the same.

Thank you.

MEEHLING & BERNARDONI

By 

RJB/kjh

Enclosure

pc: Lisa Rigdon
John Kraft

IN THE CIRCUIT COURT
FOR THE FIFTH JUDICIAL CIRCUIT
EDGAR COUNTY, PARIS, ILLINOIS

JOHN KRAFT,)
)
Plaintiff,)
)
vs.)
)
CLARK-EDGAR RURAL)
WATER DISTRICT (CERWD)) 2012-MR-44
)
and)
)
KEVIN CONOVER, acting in his)
official capacity as FOIA Officer of)
CERWD)
)
Defendants.)

MOTION TO DISMISS

Now comes the Defendants, Clark-Edgar Rural Water District (CERWD) and Kevin Conover, as FOIA Officer of the CERWD (Conover), by its attorneys Meehling & Bernardoni and pursuant to Section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615) moves the court to dismiss the Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief for the reason that it is substantially insignificant in law.

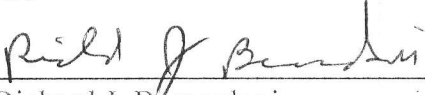
Said Motion is insignificant in that it is based upon the assumption that the CERWD can not request reimbursement for costs incurred to respond to an Illinois Freedom of Information Act (5 ILCS Section 144/1 et seq.(FOIA)) request.

Section 6(b) of the FOIA authorizes CERWD to charge a fee to reimburse it for its actual cost for reproducing and certifying public records.

Attached is an Affidavit of Conover and an Affidavit of Robert Colvin in support of this Motion.

WHEREFORE Defendants pray that the court will dismiss the Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief as substantially insignificant in law.

CLARK-EDGAR RURAL WATER DISTRICT
and KEVIN CONOVER, AS FOIA OFFICER
of CLARK-EDGAR RURAL WATER
DISTRICT

By: 
Richard J. Bernardoni
Their Attorney

Richard J. Bernardoni
Meehling & Bernardoni
115 S. 6th Street
P.O. Box 100
Marshall, IL 62441
Telephone: 217-826-6330
Email: meehlingandbernardoni@frontier.com

IN THE CIRCUIT COURT
FOR THE FIFTH JUDICIAL CIRCUIT
EDGAR COUNTY, PARIS, ILLINOIS

JOHN KRAFT,

Plaintiff,

vs.

CLARK-EDGAR RURAL
WATER DISTRICT (CERWD)

and

KEVIN CONOVER, acting in his
official capacity as FOIA Officer of
CERWD

Defendants.

2012-MR-44

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

STATE OF ILLINOIS)
)
COUNTY OF EDGAR)

SS.

Kevin Conover on oath states:

1. That he resides at 6297 N. River Road, West Union, IL 62477
2. That he currently is employed by Defendant, Clark-Edgar Rural Water District (CERWD) as General Manager/Operator.
3. That CERWD is a water utility providing water to the public.
4. That as General Manager/Operator of CERWD he has been appointed its Freedom of Information Act (FOIA) Officer.
5. That in his capacity as FOIA Officer for CERWD he responds to FOIA requests.
6. That the CERWD received Plaintiff's FOIA request, on September 24, 2012. (Exhibit A of Plaintiff's Complaint)

7. That the Plaintiff received the same request from Kirk Allen on September 17, 2012 (Exhibit A attached hereto).
8. That the CERWD did not have the requested records in its possession. It contacted Robert Colvin of Francis Associates for a copy of the records in its possession.
9. That Francis Associates invoiced the CERWD for its time to locate what documents it had in its possession (Exhibit B attached hereto)
10. That CERWD invoiced Kirk Allen (Allen) for its cost in obtaining the records (Exhibit B).
11. That Allen failed to pay the invoice and CERWD has not been reimbursed for its cost in reproducing the records.
12. That the facts stated in this Affidavit are within my personal knowledge, and, if sworn as a witness, I can testify competently to the facts as stated.

November 5, 2012.

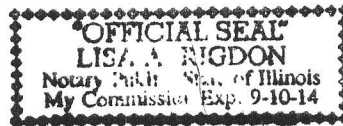


Kevin Conover

SUBSCRIBED AND SWORN TO before
me this 5th day of November, 2012.



NOTARY PUBLIC



Richard J. Bernardoni
Meehling & Bernardoni
115 S. 6th Street
P.O. Box 100
Marshall, IL 62441
Telephone: 217-826-6330
Email: meehlingandbernardoni@frontier.com

EXHIBIT A

Subject: Fw: FOIA Request
From: Clark-Edgar Rural water District <clarkedgarwater@yahoo.com>
Date: 9/17/2012 1:06 PM
To: Meehling Bernardoni <meehlingandbernardoni@frontier.com>
CC: Tom Jones <tjones1212@yahoo.com>, Rich Kash <rkash@fgklaw.net>

----- Forwarded Message -----

From: Kirk Allen <kirk@edgarcountywatchdogs.com>
To: ClarkEdgarWater@yahoo.com
Sent: Monday, September 17, 2012 1:28 PM
Subject: FOIA Request

In accordance with the Freedom of Information act of Illinois I am requesting the following.

1. Copy of Clark-Edgar Advertising Bids published in the Decatur Herald paper in March of 2008
2. Copy of E-mail sent to Roger Eddy on or about 5/8/2008. Email was to Roger for the overall Clark-Edgar map and the CERWD paid \$52.50 for this email that according to the invoice from Francis Associates was sent by T. Turner.
3. Copy of phone records reflecting phone call made to Roger Eddy on or about 6/9/2008 by Bob Colvin which CERWD paid \$160.00 for this transaction listed on a Francis Associates invoice.

Considering the CERWD has in fact paid Francis Associates for the Email and Phone call, those records pertaining to the above referenced requests are public records.

Please note that in the FOIA act, "A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act."

I am requesting Electronic copies if possible.

If you have any questions please let me know.

Thanks
Kirk Allen
PO Box 593
Kansas, IL 61933

EXHIBIT B

FRANCIS ASSOCIATES
CONSULTING ENGINEERS
LAND SURVEYORS

330 NORTH CENTRAL AVENUE
PARIS, ILLINOIS 61944
PH. (217) 465-5306
FAX (217) 465-5307

TO: Clark-Edgar Rural Water District
475 Il. Highway 1
Marshall, IL 62441

DATE: September 21, 2012

INVOICE NO:

INVOICE OR STATEMENT FOR SERVICES OR SUPPLIES AS LISTED BELOW

FOIA Request – September 21, 2012

Bob Colvin	0.5	90.00	\$ 45.00
Troy Turner	0.5	62.00	\$ 31.00
		TOTAL	\$ 76.00
		TOTAL AMOUNT DUE	\$ 76.00

IN THE CIRCUIT COURT
FOR THE FIFTH JUDICIAL CIRCUIT
EDGAR COUNTY, PARIS, ILLINOIS

JOHN KRAFT,)
)
) Plaintiff,)
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) vs.)
)
) CLARK-EDGAR RURAL)
) WATER DISTRICT (CERWD)) 2012-MR-44
)
) and)
)
) KEVIN CONOVER, acting in his)
) official capacity as FOIA Officer of)
) CERWD)
)
) Defendants.)

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

STATE OF ILLINOIS)
) SS.
)
) COUNTY OF EDGAR)

Robert Colvin on oath states:

1. That he resides at 1275 Sugar Creek Lane, Paris, IL 61944
2. That he is the owner of Francis Associates of Paris, Illinois
3. That Francis Associates is a private non-governmental firm providing engineering services to the public.
4. That in 2008 Francis Associates provided general engineering services to the Clark-Edgar Rural Water District (CERWD).
5. That the CERWD is a water utility in the business of supplying water to the public.
6. That in 2008 the water treatment plant of the City of Martinsville, Illinois (Martinsville) flooded.

7. That CERWD as well as the City of Marshall, Illinois (Marshall), also a supplier of water, were the two nearest water suppliers to Martinsville.
8. That the CERWD and Marshall worked together to temporarily furnish water to Martinsville.
9. That in its efforts to supply water to Martinsville, Francis Associates worked with Roger Watwood of Marshall.
10. That the undersigned responded to the CERWD's request for documentation pursuant to Kirk Allen's September 17, 2012 FOIA request.
11. That the undersigned was able to locate the request for bids (request number 1).
12. That in looking for the requested email to Roger Eddy the undersigned discovered that there was no email sent to Roger Eddy and that the email on the date requested was sent to Roger Watwood.
13. That Francis Associates invoiced CERWD \$76.00 for its services in locating the records.
14. That the facts stated in this Affidavit are within my personal knowledge, and, if sworn as a witness, I can testify competently as to the facts as stated.

November 6TH, 2012.


Robert Colvin

SUBSCRIBED AND SWORN TO before
me this 6th day of November, 2012.




NOTARY PUBLIC

Richard J. Bernardoni
Meehling & Bernardoni
115 S. 6th Street
P.O. Box 100
Marshall, IL 62441
Telephone: 217-826-6330
Email: meehlingandbernardoni@frontier.com

CERTIFICATE OF MAILING

The undersigned certifies that on November 6, 2012, she mailed a copy of Motion to Dismiss to:

John Kraft
7060 Illinois Highway 1
Paris, IL 61944

enclosed in a sealed envelope with postage prepaid.

Cynthia R. Shotts

SUBSCRIBED AND SWORN to
before me this 6th day of
November, 2012.

Kelly J. Hammonds
NOTARY PUBLIC

