

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

**FILED**

NOV - 7 2013

*Karen D. Halloran*  
Circuit Clerk, 5th Judicial Circuit Edgar County

Kirk Allen

Plaintiff

vs

The COUNTY OF EDGAR

and

Jimmy Wells, acting in his Official capacity  
as FOIA Officer of the Edgar County  
Airport

Defendants

Case No: 13-MR-76

COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF

**NOW COMES THE PLAINTIFF**, Mr. Kirk Allen, *pro se*, and prays this Court render a declaratory judgment and grant an injunctive relief under the Freedom of Information Act ("FOIA"), 5 ILCS 140/1, *et seq.* For this complaint states as follows.

1. Plaintiff – Kirk Allen, is an Illinois resident, and resides in the County of Edgar.
2. Defendants are the County of Edgar, a public body as that term is defined by 5 ILCS 140/2(a), and Jimmy Wells, in his official capacity as the FOIA Officer of the Edgar County Airport.
3. On October 28, 2013, Plaintiff served a FOIA request on Defendant office of the Edgar County Airport seeking copies of public records that included:



1. *Copy of the 1099 INT documents provided for all airport banking accounts in the name of Jack Asher, Chris Patrick, and/or any combination of the two since 2005 to present.*

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

4. As of November 7<sup>th</sup>, 2013, Defendants have failed to provide Plaintiff with access to the records responsive to his request in accordance with 5 ILCS 140/3.

5. 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.*

6. Section 2.5 of the FOIA [5 ILCS 140/2.5] provides that:

*"All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public".*

7. Pursuant to Section 7(2) of the Act [5 ILCS 140/11(h)]:



*"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".*

8. 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."*

9. 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.

### **COUNT ONE**

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

10. Plaintiff reaffirms paragraphs 1-9 as though fully restated herein.

11. Plaintiff is being denied his legal right to inspect public records by Defendants failure to produce the records requested on October 28, 2013. See Exhibit A.

12. Plaintiff has no adequate remedy at law.

### **COUNT TWO**

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

13. Plaintiff reaffirms paragraphs 1-9 as though fully restated herein.



14. Defendant improperly denied the request in Count One of this Complaint by their failure to follow 5 ILCS 140/3(d) and 5 ILCS140/9 *et seq.*

15. Plaintiff has no adequate remedy at law.

**WHEREFORE**, Plaintiff prays this Court:

A. Declare Defendants to be in violation of the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*; and

B. Enjoin the Defendants from continuing to withhold access to any and all non-exempt public records responsive to Plaintiff's FOIA requests and further enjoin Defendants to provide copies of any and all records responsive to Plaintiff's FOIA requests without further delay; and

C. Enjoin the Defendants to prepare, forthwith, an affidavit declaring that they will provide complete access to Plaintiff and further declaring that any and all non-exempt public records responsive to the request will be made available to Plaintiff; and

D. Order Defendants to prepare, forthwith, an affidavit identifying with specificity any and all public records responsive to Plaintiff's FOIA requests that are claimed to be subject to legal exemption from disclosure and further identifying with specificity the reason(s) for any such claim of exemption; and


E. Declare Defendants acted willfully, intentionally, and in bad faith in failing to properly deny and in failing to provide responsive documents to Plaintiff's FOIA requests; and

F. Order Defendants to pay a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence, as outlined in 5 ILCS 140/11(j) as the Court finds just and equitable; and

G. Award Plaintiff reasonable fees, and all costs/fees incurred in filing this suit as the Court finds just and equitable.

Dated: November 7, 2013

Respectfully submitted,



Kirk Allen, *pro se*  
3894 Coach Road  
Kansas, IL 61933  
Tel: (217) 508-0564  
*Plaintiff*

Signed and sworn before me  
This 7th day of November, 2013


Karen D. Halloran  
ack



CERTIFICATE OF SERVICE

Kirk Allen, Plaintiff, hereby certifies that they caused a copy of Plaintiff's Complaint to be served upon the following parties via hand delivery or by U.S. Mail, with proper postage prepaid on

November 7, 2013:



Kirk Allen, *pro se*  
3894 Coach Road  
Kansas, IL 61933  
Tel: (217) 508-0564  
*Plaintiff*

Edgar County Clerk  
115 W. Court Street  
Paris, Illinois 61944

Jimmy Wells  
15551 Airport Road  
Paris, Illinois 61944

Exhibit

A

Kirk Allen

**From:** Kirk Allen <KAllen@1ststriketech.com>  
**Sent:** Monday, October 28, 2013 10:35 AM  
**To:** jwells@comwares.net

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

1. Copy of the 1099 INT documents provided for all airport banking accounts in the name of Jack Asher, Chris Patrick, and/or any combination of the two since 2005 to present.

(5 ILCS 160/3) (from Ch. 116, par. 43.6)

Sec. 3. Records as property of State.

(a) All records created or received by or under the authority of or coming into the custody, control, or possession of public officials of this State in the course of their public duties are the property of the State. These records may not be mutilated, destroyed, transferred, removed, or otherwise damaged or disposed of, in whole or in part, except as provided by law. Any person shall have the right of access to any public records, unless access to the records is otherwise limited or prohibited by law.

This request is a non-commercial request. I am requesting electronic copies. In the event papers copies must be provided I am requesting the fees be waived as outlined in the FOI Act as this is a request for public information that is to be shared publicly.

If a waiver of fees is not given then I do request an estimate of the cost be provided prior to filling the FOIA request.

If you have any questions please let me know.

Kirk Allen  
PO Box 593  
Kansas, IL 61933