#### IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT DOUGLAS COUNTY, TUSCOLA, ILLINOIS

JOHN KRAFT ) Plaintiff )		
VS ) ARCOLA TOWNSHIP )	13-MR- <u>グ</u> ろ	FILED
) Defendant. )		NOV 15 2013
	R DECLARATORY NJUNCTIVE RELIEF	CLERK OF THE CIRCUIT COURT DOUGLAS COUNTY, ILLINOIS

Now comes Plaintiff, Mr. John Kraft, *pro se*, who prays this Court render a declaratory judgment and grant injunctive relief under the Freedom of Information Act ("FOIA"), 5 ILCS 140/1, *et seq*. For this Complaint states as follows:

- Plaintiff John Kraft. The plaintiff is an Illinois resident, and resides in the County of Edgar.
- 2. Defendant is the Township of Arcola, a public body as that term is defined in 5 ILCS 140/2(a).
- On April 23, 2013, Plaintiff served a FOIA request on Defendant office of Arcola
   Township seeking copies of public records.

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

4. On April 23, 2013, Plaintiff served a second FOIA request on Defendant office of Arcola Township seeking copies of public records.

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

- 5. On or about April 30, 2013, Plaintiff received, through postal mail a partial denial to both FOIA requests. This may be treated as a denial. Plaintiff then emailed Defendant, on May 1. 2013, noting, among others, that the responsive documents were not complete or improperly redacted, that the fee imposed was improper, and Plaintiff again asked for the requested records. A true and correct copy of the response is attached hereto and incorporated herein as Exhibit C.
- 6. In a letter dated May 3, 2013, Mark Petty, Arcola Township Attorney, responded to Plaintiff's May 1, 2013 email to Defendant.

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

7. On May 4, 2013, Plaintiff responded to Defendant and their Attorney with a clarification of what was missing and improperly redacted, among others, and asking for the records for a third time.

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

8. In a letter dated May 8, 2013, Mark Petty, Arcola Township Attorney, responded to Plaintiff's May 4, 2013 letter, effectively denying Plaintiff's FOIA request and demanding payment of an improper invoice.

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

9. 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.

#### 10. 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.

# 11. 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.

- 13. Article VIII, Section 1 (c) of the 1970 Constitution of the State of Illinois states that "Reports and records of the obligation, receipt and use of public funds...are available for inspection by the public according to law."
- 14. Section 3a of the Local Records Act (50 ILCS 205/3a) states in part:

Sec. 3a. Reports and records of the obligation, receipt and use of public funds of the units of local government and school districts...are public records available for inspection by the public...

Section 15 of the Local Records Act does make a change to Section 3a, but that change only relates to the <u>inspection of records</u>, not to the definition of those records in Section 3a.

- 15. Section 4 of the Local Records Act (50 ILCS 205/4) states in part:
- Sec. 4. All public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law.
- 16. Section 7 of the Local Records Act (50 ILCS 205/7) references the rules of disposition of records and states in part:
  - Sec. 7. Disposition rules. Except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.

17. 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."

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

- 19. Plaintiff reaffirms paragraphs 1-18 as though fully restated herein.
- 20. Plaintiff is being denied his legal right to inspect public records by Defendant failure to produce the records requested on April 23, 2013. See Exhibit A.
  - 21. Plaintiff has no adequate remedy at law.

#### **COUNT TWO**

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

- 22. Plaintiff reaffirms paragraphs 1-18 as though fully restated herein.
- 23. Plaintiff is being denied his legal right to inspect public records by Defendant failure to produce the records requested in his second request on April 23, 2013. See Exhibit B.
  - 24. Plaintiff has no adequate remedy at law.

#### **COUNT THREE**

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

- 25. Plaintiff reaffirms paragraphs 1-18 as though fully restated herein.
- 26. 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.
  - 27. Plaintiff has no adequate remedy at law.

#### **COUNT FOUR**

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

- 28. Plaintiff reaffirms paragraphs 1-18 as though fully restated herein.
- 29. Defendant improperly denied the request in Count Two of this Complaint by their failure to follow 5 ILCS 140/3 and 5 ILCS 140/9.
  - 30. Plaintiff has no adequate remedy at law.

#### **COUNT FIVE**

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

- 31. Plaintiff reaffirms paragraphs 1-18 as though fully restated herein.
- 32. Defendant improperly denied the request in Count One of this Complaint by their failure to follow 5 ILCS 140/6; the authority to charge fees. See Exhibit C.
  - 33. Plaintiff has no adequate remedy at law.

#### **COUNT SIX**

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

- 34. Plaintiff reaffirms paragraphs 1-18 as though fully restated herein.
- 35. Defendant improperly denied the request in Count Two of this Complaint by their failure to follow 5 ILCS 140/6; the authority to charge fees. See Exhibit C.
  - 36. Plaintiff has no adequate remedy at law.

#### WHEREFORE, Plaintiff prays this Court:

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

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

C. Enjoin the Defendant 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 Defendant 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 Defendant acted willfully, intentionally, and in bad faith in the imposition of a fee not consistent subsections (6)(a) and (b), failing to properly deny plaintiff's FOIA requests, and in failing to provide responsive documents to Plaintiff's FOIA requests; and

F. Order Defendant 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. Order Defendant to prepare a proper invoice for allowable fees under 5 ILCS 140/6.

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

Dated: November 15, 2013

Respectfully submitted,

John Kraft, pro se

7060 Illinois Highway 1

Paris, Illinois 61944

Tel: (217) 808-2527

Plaintiff

Signed and sworn before me This 15 day of November, 2013

Signed and sworn to before me this

15 day of 1/035cm by 20/3.

Notary Public

OFFICIAL SEAL
MARY B. OCHS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 1/02/2017

# CERTIFICATE OF SERVICE

John Kraft, Plaintiff, hereby certifies that he caused a copy of Plaintiff's Complaint to be served upon the following party via hand delivery or by U.S. Mail, with proper postage prepaid on November 15, 2013:

Arcola Township Clerk Arcola Township 108 E. Main St. Arcola, Illinois 61910

John Kraft, pro se

7060 Illinois Highway 1

Paris, Illinois 61944

Tel: (217) 808-2527

Plaintiff

# Exhibit A

----- Original Message -----

Subject: FOIA Request #1: 4-23-2013

From: <woofwoof@edgarcountywatchdogs.com>

Date: Tue, April 23, 2013 9:58 am

To: arcolats@arcola-il.com

In accordance with the Illinois Freedom Of Information Act, I request the following:

- 1. List of township trustees and their contact information
- 2. Complete compensation package for the trustees
- 3. Copy of the Freedom Of Information Act and Open Meetings Act Training Certificates for all of the trustees and the FOIA/OMA Officer
- 4. Name and contact information of the Township FOIA and OMA Officer
- 5. List of all employees and their complete compensation package
- 6. Copy of all bank statements since Nov 1, 2012
- 7. Copy of all credit card statements since Jan 1, 2012

This is not a commercial request.

Electronic copies are preferred.

Thanks for your assistance,

John Kraft Edgar County Watchdogs, Inc. 7060 Illinois Highway 1 Paris, Illinois 61944

Ph: 217-808-2527

Email: woofwoof@edgarcountywatchdogs.com

# Exhibit B

----- Original Message ------

Subject: FOIA Request #2: 4-23-2013

From: <woofwoof@edgarcountywatchdogs.com>

Date: Tue, April 23, 2013 10:07 am

To: arcolats@arcola-il.com

In accordance with the Illinois Freedom Of Information Act, I request the following:

- 1. Copy of all gas charge card statements since Jan 1, 2012
- 2. Copy of all Phone Bills since Jan 1, 2012
- 3. Copy of all cell phone bills since Jan 1, 2012
- 4. Exact location of the wireless internet access point

This is not a commercial request.

Electronic copies are preferred.

Thanks for your assistance,

John Kraft Edgar County Watchdogs, Inc. 7060 Illinois Highway 1 Paris, Illinois 61944

Ph: 217-808-2527

Email: woofwoof@edgarcountywatchdogs.com

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----- Original Message -----Subject: FOIA Requests (Arcola Township)

From: <woofwoof@edgarcountywatchdogs.com>

Date: Wed, May 01, 2013 2:23 pm

To: arcolats@arcola-il.com

Arcola FOIA Officer,

I received your response to my FOIA requests and they are incomplete.

The following documents are missing or have other problems with your response to the FOIA requests:

- All of the pages of the phone bills (Verizon Wireless and Consilidated Communications) were not included.
- Improper redactions on the phone bill pages provided.
- All of the pages of the Phillips 66 credit card (gas card) statements are not included. Improper redactions.
- All of the pages for the Bank Statements are not included. Do you really only have one combined fund bank account for all township monies?

#### - FEES:

I submitted 2 different FOIA requests.
The first one consisted of 55 pages of response
The second one consisted of 73 pages of response

You may charge for anything over 50 pages (for each request) So, for the first request it is  $5 \times .15 = \$0.75$ The second one is  $23 \times .15 = \$3.45$ For a total of \$0.75 + \$3.45 = \$4.20

However; with the requested information incomplete, I decline to pay for any copies and demand a complete set of documents pursuant to both of my FOIA requests.

This is not a new request, but a demand for documents pursuant to the 2 requests submitted on April 23. 2013. Incompleted and improperly redacted documents consititutes a denial of both requests. Please respond promptly.

Thanks for your consideration, John Kraft Edgar County Watchdogs, Inc. 7060 Illinois Highway 1 Paris, Illinois 61944

Ph: 217-808-2527

Email: woofwoof@edgarcountywatchdogs.com

------ Original Message -------Subject: FOIA Request #1: 4-23-2013 From: <woofwoof@edgarcountywatchdogs.com>

Date: Tue, April 23, 2013 9:58 am

To: arcolats@arcola-il.com

In accordance with the Illinois Freedom Of Information Act, I request the following:

- 1. List of township trustees and their contact information
- 2. Complete compensation package for the trustees
- 3. Copy of the Freedom Of Information Act and Open Meetings Act Training Certificates for all of the trustees and the FOIA/OMA Officer
- 4. Name and contact information of the Township FOIA and OMA Officer
- 5. List of all employees and their complete compensation package
- 6. Copy of all bank statements since Nov 1, 2012
- 7. Copy of all credit card statements since Jan 1, 2012

This is not a commercial request.

Electronic copies are preferred.

Thanks for your assistance,

John Kraft Edgar County Watchdogs, Inc. 7060 Illinois Highway 1 Paris, Illinois 61944

Ph: 217-808-2527

Email: woofwoof@edgarcountywatchdogs.com

----- Original Message ------ Subject: FOIA Request #2: 4-23-2013

From: <woofwoof@edgarcountywatchdogs.com>

Date: Tue, April 23, 2013 10:07 am

To: arcolats@arcola-il.com

In accordance with the Illinois Freedom Of Information Act, I request the following:

- 1. Copy of all gas charge card statements since Jan 1, 2012
- 2. Copy of all Phone Bills since Jan 1, 2012

- 3. Copy of all cell phone bills since Jan 1, 2012
- 4. Exact location of the wireless internet access point

This is not a commercial request.

Electronic copies are preferred.

Thanks for your assistance,

John Kraft Edgar County Watchdogs, Inc. 7060 Illinois Highway 1 Paris, Illinois 61944

Ph: 217-808-2527

Email: woofwoof@edgarcountywatchdogs.com

MARK T. PETTY

ANDREW & PETTY

Nav 1. 2013

Mr. John Krall 7080 Illinois Highway 1 Paris, 11. 61544

Ret Accola Township

Unar Mr. Krait:

First of all, your email has been referred to me for response.

Air You have received copies of what the Luwnship weeps, the only position of the bull or statement that reflects the balance paid. They do not have every page of every credit card or chune blils.

2. You have not indicated what is an improper reduction on

the phone half so we can't respond to that.

3. The only thing that is repacted is account and pir ... numbers which are not appropriate for disclosure.

Your FOIA requests are having treated as one request. They came at the same fime. You cannot specie the payment of the small empense by breaking up the request the way you did. Your claim that there are two separate requests, one of which is dated April 3. 2013 at 9:58 a.m. and one of which is deted April 23. 2013 at 10:07 a.m., nine minutes later, ones not constitute two requests but are one request. If you decline to pay for any copies and demand a complete set of copies, nothing further will be provided until the two way street is followed by you. It is interesting that you have not even provided what you claim is the amount due. Your speculation about what is required for the requirements for the Frencism of Incormation Act are fast that. Your views.

thank you very much for your attention to this matter.

Very train vours.

market and the tenunded

Exhibit E

#### Edgar County Watchdogs, Inc 7060 Illinois Highway 1 Paris, Illinois 61944 217-808-2527

John Kraft

May 4, 2013

Arcola Township FOIA Officer
108 East Main Street
Arcola, Illinois 61910

and

Mr. Mark Petty 111 East Main Street, Box 128 Arcola, Illinois 61910

Re: Arcola Township

Arcola Township FOIA Officer and Mr. Petty,

I think there is some misunderstanding as to what I asked for and what the requirements of the Freedom Of Information Act are.

I will attempt to clarify what I asked for, what I did not receive, and what the requirements are pursuant to FOIA:

- 1. In my first FOIA request dated April 23, 2013, with the Subject as: "FOIA Request #1: 4-23-2013", I asked for the following:
  - List of township trustees and their contact information RECEIVED
  - Complete compensation package for the trustees RECEIVED
  - Copy of the Freedom Of Information Act and Open Meetings Act Training Certificates for all of the trustees and the FOIA/OMA officer RECEIVED
  - Name and contact information of the township FOIA and OMA officer RECEIVED
  - List of all employees and their complete compensation package RECEIVED
  - Copy of all bank statements since Nov 1, 2012 -

INCOMPLETE/REDACTED

- Copy of all credit card statements since Jan 1, 2012 –
   INCOMPLETE/REDACTED
- 2. In my second FOIA request dated April 23, 2013, with the Subject as: "FOIA Request



# #2: 4-23-2013", Lasked for the following:

- Copy of all gas charge card statements since Jan 1, 2012 INCOMPLETE/REDACTED
- Copy of all phone bills since Jan 1, 2012 INCOMPLETE/REDACTED
- Copy of all cell phone bills since Jan 1, 2012 INCOMPLETE/REDACTED
- Exact location of wireless internet access point RECEIVED
- 3. The FOIA requests sent are two separate and distinct requests and shall be treated as such Arcole Township does not have the authority to "treat them as one request" and netited do you.

The point I am trying to make is that nine seconds or nine years apart, they are two separate requests and will be treated as such. Your statement that I am trying to have the power of the small expense" is a lie.

My destination of payment, pursuant to 5 ILCS 140/6(d), is simply because I did not receive wise Tasked for in my requests, and the combining of the two requests into a single request. Tasked for in my requests, and the combining of the two way street and provide the requested incuments and a proper invoice.

- 4. You stated that I received copies of what the township keeps. My response to that is who gave the authority to the township to destroy public documents; ie: the remaining pages of the statements? Since we know, 5 ILCS 140/2.5, that all records relating to the obligation, receipt and use of public funds are public records subject to inspection (this includes every page of the statements).
- 5. FOIA and what constitutes public records:

Section 2(c) of FOIA defines public records as records "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."

Section 2.5 of FOIA further defines Records of Funds as "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."

Section 3(a) of FOIA states that a public body may not grant to any person or entity, whether by contract, license, or otherwise, the exclusive right to access and disseminate any public record as defined in this act.

Section 6(d) of FOIA states that "The imposition of a fee not consistent with subsections (6)(a) and (b) of this act constitutes a denial of access to public records for the purposes of judicial review."

Section 7(2) of FOIA states that "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 ... shall be considered a public record of the public body, for the purposes of this act.

Article VIII, Section 1(c) of the Constitution of the State of Illinois states that "reports and records of the obligation, receipt, and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law."

Section 4 of the Local Records Act, 50 ILCS 205/4 states that "All public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law." The procedures for disposing of records is further explained in Sections 7 and 10 of the Local Records Act.

6. In closing, the records I requested are records defined in 5 ILCS 140/2(c), 5 ILCS 140/2.5, and Article VIII (1)(c) of the Constitution of the State of Illinois. If the Arcola Township claims they did not keep all of the public records that were prepared for them (in violation of 50 ILCS 205/4 and 7), then they are required under FOIA to contact the Arcola First Bank, Phillips66, Verizon, Consolidated Communications, and any other company that holds those records, and obtain a copy pursuant to 5 ILCS 140/7(2) as they are in fact still considered public records of the public body. Failure to obtain the records in the possession of a contracted entity also violates 5 ILCS 140/3(a) by giving those companies exclusive access to the records in question.

When redactions are made, a specific reference to the section and paragraph under 5 ILCS 140/7 authorizing the redactions must be made. Information that is already public knowledge should not be redacted, for instance:

Verizon Account Number: 486086166-00001 Verizon Account Number: 380306413-00001 Phillips66 Account Number: 192-767-295-4 Phillips66 Account Number: 193-450-563-5

Does Arcola Township have any FS Gas/Credit cards, or Marathon credit cards? If not, this would be the first public body I have requested information from that did not have either of those.

When contacting these outside contracted companies for copies of the records, it is important to remember that my initial requests were for electronic copies of the

public records. The companies that hold these records, presuming Arcola Township does not holds these records in electronic format. They must likewise be provided to me in electronic format.

I consider this an improper denial of two separate FOIA requests. This is a demand for the responsive public records pursuant to those requests made on April 23, 2013. I further request an immediate communication from you advising me whether or not you will provide the requested documents. Failure to respond promptly will be considered a willful, intentional, or otherwise act in bad faith in your failure to comply with the Freedom Of Information Act, and will also result in the exercise of my rights pursuant to 5 ILCS 140/11.

Thanks for your consideration of this matter,

John Kraft

7060 Illinois Highway 1

Paris, Illinois 61944

217-808-2527

#### Print | Close Window

Subject: FOIA Requests (Arcola Township)

From: woofwoof@edgarcountywatchdogs.com

Date: Wed, May 01, 2013 2:23 pm To: arcolats@arcola-il.com

Boo:

Arcola FOIA Officer,

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Ph: 217-808-2527

Email: woofwoof@edgarcountywatchdogs.com





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Thanks for your assistance,

John Kraft Edgar County Watchdogs, Inc. 7060 Illinois Highway 1 Paris, Illinois 61944

Ph: 217-808-2527

Email: woofwoof@edgarcountywatchdogs.com

----- Original Message -----

Subject: FOIA Request #2: 4-23-2013

From: < woofwoof@edgarcountywatchdogs.com >

Date: Tue, April 23, 2013 10:07 am

To: arcolats@arcola-il.com

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- 2. Copy of all Phone Bills since Jan 1, 2012
- 3. Copy of all cell phone bills since Jan 1, 2012

4. Exact location of the wireless internet access point

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Electronic copies are preferred.

Thanks for your assistance,

John Kraft Edgar County Watchdogs, Inc. 7060 Illinois Highway 1 Paris, Illinois 61944

Ph: 217-808-2527

Email: woofwoof@edgarcountywatchdogs.com

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# ETTY LAW OFFICE, P.C.

MARK T. PETTY

ANDREW L. PETTY

May 3, 2013

Mr. John Kraft 7060 Illinois Highway 1 Paris, IL 61944

Re: Arcola Township

Dear Mr. Kraft:

First of all, your email has been referred to me for response.

- 1. You have received copies of what the township keeps, the only portion of the bill or statement that reflects the balance paid. They do not have every page of every credit card or phone bills.
- 2. You have not indicated what is an improper redaction on the phone bill so we can't respond to that.
- 3. The only thing that is redacted is account and pin numbers which are not appropriate for disclosure.

Your FOIA requests are being treated as one request. They came at the same time. You cannot avoid the payment of the small expense by breaking up the request the way you did. Your claim that there are two separate requests, one of which is dated April 23, 2013 at 9:58 a.m. and one of which is dated April 23, 2013 at 10:07 a.m., nine minutes later, does not constitute two requests but are one request. If you decline to pay for any copies and demand a complete set of copies, nothing further will be provided until the two way street is followed by you. It is interesting that you have not even provided what you claim is the amount due. Your speculation about what is required for the requirements for the Freedom of Information Act are just that, your views.

Thank you very much for your attention to this matter.

Very truly yours,

Mark T. Petty

MTP/lr

p.c. Bill Coombe





# OFFICE OF THE ATTORNEY GENERAL STATE OF ILLINOIS

Lisa Madigan

June 20, 2012

Mr. John Kraft

Paris, Illinois 61944

Ms. Nanette Crippes FOIA Officer Edgar County Emergency Telephone System Board 115 W. Court, Rm. C Paris, Illinois 61944

RE: TOTA Request for Review 2011 PAC 17699

Dear Mr. Kraft and Ms. Crippes:

Pursuant to section 9.5 of the Freedom of Information Act (FOIA) (5 II CS 140/9.5 (West 2010), as amended by Public Act 97-579, effective August 26, 2011), we have received a Request for Review of the Edgar County Emergency Telephone System Board's (Board) response to a FOIA request by Mr. John Kraft. We have reviewed the Board's response to the allegations as well as Mr. Kraft's reply to that response.

On October 4, 2011, Mr. John Kraft submitted a FOIA request to the Board seeking copies of, among other things, "all cell phone statements, to include all pages for the last 5 years." On October 5, 2011, the Board responded by providing a list of payments from Cellular One and the first page of bills from Verizon Wireless.

On December 7, 2011, the Public Access Counselor received Mr. Kraft's Request for Review of the Board's response. On January 3, 2012, this office sent a letter to the Board

<sup>&</sup>lt;sup>4</sup>Correspondence from Mr. John Kraff to 911 Coordinator, Edgar County (Cetober 4, 2011).

Correspondence from Ms. Namette Crippes, FOIA Officer, Edgar County Emergency Talephone System Board to Mr. John Krett (October 5, 2011).

Correspondence from Mr. John Kraft to Public Access Counselor, State of Illinois (December 7,

Mc John Krati Ms. Nanette Crippes June 20, 2012 Page 2

asking for a written response to Mr. Kraff's Request for Review, including whether the Board had any other documents in its possession or custody that are responsive to Mr. Kraff's request and, to the extent the Board relied on a FOIA exemption to reduct information, provide a detailed factural basis in support of its assertion."

On January 6, 2012, the Board responded with a letter stating that the only information that was reducted from the documents was personal information, and asserting that the self-phone records were "a personal cell phone account \* \* \* the contract for the account is "Ms. Crippes"], not the ETSB. This payment was part of [Ms. Crippes"] compensation package." "The Board also asserted that it did not possess any other documents responsive to Mr. Eraft's TOTA request.

Mr. Kraft responded to the Board's letter on January 20, 2012. Mr. Kraft reserved that the documents provided by the Board were missing pages and were improperly retirated. Mr. Kraft also provided a request form dated August 30, 2011, purportedly from Ms. Upppes, requesting payment from the Edgar County treasurer to Verizon Wireless for Ms. Crippes cell phone bill.

#### DETERMINATION

All public records in the possession or ensudy of a public body are "presumed to be open to inspection and copying" and a public body has the burden of proving by "clear and comvincing evidence" that a record is exempt from disclosure. 5 ILCS 140 L7 (West 2010), "Public records" include "all records " " " pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or tor, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140 2(c-5) (West 2010). Section 2.5 of FOIA further states that "all records relating to the obligation, receipt and use of public funds of the State " " are public records." 5 ILCS 140 2.5 (West 2010).

2011.

\*\*Correspondence from Lindsay LaVine, Assistant Attorney General, Public Access Bureauto Ms. Namette Crippes, FOEA Officer, Edgar County, Emergency, Telephone System Board (humary § 2012).

\*\*Correspondence from Ms. Nametic Crippes, FORA Officer, Edgar Comny Emergency Telephone System Board to Lindsay LaVine, Assistant Attorney General, Public Access Buream January 6, 2012.)

Access BuneautJanuary 20, 2012)

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# Section 7(2) of FOIA provides that:

jul 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 the purposes of this Act. 5 HCS 1407(2) (West 2010), assumended by Public Acts 97-333, effective August 12, 2011; 97-385, effective August 15, 2011; 97-452, effective August 19, 2011.

This office has previously concluded that cell phone records for devices and services paid for with public funds are subject to disclosure under FOIA. See Ill. Att'y. Gen. PAC Req. Rev. Ltr. 14293, issued November 7, 2011; Ill. Att'y. Gen. PAC Req. Rev. Ltr. 8224, issued June 23, 2011; and Ill. Att'y Gen. PAC Req. Rev. Ltr. 12535, issued May 4, 2011. In bet response, Ms. Crippes asserts that the cell phone is in her name, not the Board's, and that the cell phone is part of her "compensation package." A review of the materials provided by the Board's office. In addition, Mr. Kraft provided a copy of a request for payment of Ms. Crippes' cell phone bill to the Edgar County Treasurer dated August 30, 2011 as well as a copy of a cell phone bill with the account name "Edgar County 911[telephone number)." The Board has not disputed these statements

Personal information is exempt under FOTA to the extent that the disclosure of such information 'would constitute a clearly unwarranted invasion of personal privacy "=5.41 CS (40.7c) (c) (West 2010), as amended by PotSic Acts 97-333 effective August 12, 2011; 97-388, effective August 12, 2011; 90-482, effective August 12, 2011. The release of an individual's home telephone number or address is not classified as personal information under FOTA, but may be withheld under section 7C (bib), which exempts from disclosure certain private information.

Mr. John Kraft Ms. Nanette Crippes June 20, 2012 Page 4

Fidgar County has contineted with a carrier. Verizon Wireless (and, formerly, CellularOne), to provide cell phone service to the County. Pursuant to section 7(2), records of meaning and antigoing calls from Ms. Crippes' County-furnished cell phone maintained by Verizon Wireless (and formerly CellularOne) are public records that are deened to be in the custody of the County/Board. Therefore, pursuant to section 7(2) of FOIA, the Board must take appropriate steps to obtain copies of these records from Verizon Wireless and CellularOne in order to satisfy this request.

Further, the Board has not met its burden of demonstrating that section 7(1)(b) exempts from disclosure all telephone numbers contained in the cell phone records. Section 7(1)(b) exempts only "home or personal telephone numbers." Therefore, the Board must provide a list of all incoming and outgoing cell phone calls that pertain to this request. The Board may, pursuant to section 7(1)(b), reduct from that list all home or personal telephone numbers. We direct the Board to immediately provide these records to Mr. Kraft.

We conclude that the Board's denial of Mr. Kraft's FOIA request failed to comply with section 9(a) of FOIA (5 ILCS 140/9(a) (West 2010)) by not providing written notice of the right to submit a request for review to the Public Access Counselor or to file suit under section 11 of FOIA. We remind the Board of its obligation under section 9(a) to include this notice in future denial letters.

If you have any questions, please contact me at (312) 814-5201. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Accordingly, this correspondence shall serve to close this matter.

Very truly yours.

LINDSAY LAVINE Assistant Attorney General

Public Access Bureau

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MARK T. PETTY

ANDREW L PETTY

May \$, 2013

Mr. John Kraft 7060 Illinois Highway 1 Paris, IL 81944

Re: Arcola Township

Dear Mr. Kraft:

I received your extensive on the Freedom of Information Act. seem to be operating a different understanding of the Freedom of Information Act requires the township to allow you access to "documents". They are not obligated to give you information. They are not obligated to answer inquires.

Your claim that two Freedom of Information requests were separate and distinct when they were received on the same day and and discinct within an hour of each other is not a viable request. It is designed to subvert the township's right to collect the meager photocopying expense provided for in the act. Some of the meage. Shotter the act that you cited don't have anything to do with the issues involved. I certainly compliment you on your knowledge of the act but as it applies to this request, my client was entitled to redact the information under the statute.

The public body has not only the right, but the obligation to redact information from public records that is not within the purview of the act under Section 140/7 of 5 ILCS. With respect to your specific complaints, the redacted information from the bank statements was appropriate as this information is not in the public sphere. The dissemination of bank account numbers of the township would greatly endanger the security of the township's money and likewise, divulging the credit card information, which was redacted, would do the same. Likewise, your complaint about parts of the documents that were not produced is a complaint that cannot be met since the township has produced everything that

Mr. John Kraft May 8, 2013 Page 2

they maintain in the records and does not have an affirmative duty to recreate documents.

Your complaint about the credit card documents that are incomplete and redacted is addressed above. Only documents can be produced that are in existence. Likewise, the phone bills have been produced as far as what the township has in its possession. Your opinion that two "distinct requests" received the same day by email within less than an hour is not a complaint that will be recognized by the township. It is obviously a ploy to reduce the cost to the requester of the request and to deny the township the meager charge that they get for this. claim that "nine seconds or nine years apart" is not a valid complaint. These requests were received on the same day and the township has every right to treat them as a single request. assertion that you have some right to decline to pay for the request because you did not receive what you asked for in the request is not a valid complaint. As I have pointed out before, you didn't even pay what you claimed you owed under the case and you have failed to cite any statute that authorizes you determining your own fees. The provision of Section 140/6(d) does not authorize you to ignore the payment of the fees. statute does not authorize the refusal to pay the fees but only indicates that if the fee is not charged consistent with the act, it constitutes a denial of access to the public records.

One last thought, your suggestion that failure to respond promptly will be considered willful, intentional or otherwise an act of bad faith for the failure to comply with the Freedom of Information Act is once again, your attempt to dictate what the law requires. Please accept this reply as a demand for payment of the appropriate fees that you are obligated to pay under the statute for which you were given due notice.

Thank you very much for your attention to this matter.

Very truly yours,

Mark T. Petty

MTP/lr