

1. Admit in part. Adding that this admission is only to the extent that Defendant declared how this motion was brought, and that Plaintiff, *pro se*, denies sufficient knowledge of 735 ILCS 5/2-619 (9) to form an opinion.
2. Admit.
3. Admit. Adding that Section 2 of the Act defines a “request” as a “*written document... that is submitted to a public body...*”. Of which, there were two separate written documents submitted to a public body.
4. Admit in part. Further stating that there were two requests made by John Kraft, using an Edgar County Watchdogs, Inc. email account, during the course of researching records for the future publication of an article.

5. Deny. Further stating that the Complaint in this cause was filed by John Kraft, and that John Kraft has standing to bring this action by virtue of his interest in the cause of action, and in the fulfillment of the Freedom Of Information Act ("FOIA") requests. Additionally, Section 11 (a) of the Act states that "Any person denied access to inspect or copy any public record by a public body may file suit..." and Section 2 (b) defines a "Person" as "any individual, corporation, partnership, firm, organization or association, acting individually or as a group." In reading these two sections, it is clear that in this case, either John Kraft individually, the Edgar County Watchdogs, Inc. individually, or both collectively may file suit. Finally, once the records were received, John Kraft, and not the Edgar County Watchdogs, Inc., would have a "*possessory interest*" in the records, defined in Black's Law Dictionary as "*the present right to control property, including the right to exclude others*". This also follows the rule of "*reporter's privilege*" as it applies to the actual reporter, and not to a newspaper or corporation. Therefore, John Kraft has "standing" and is an "interested party" to this suit.

6. Admit

7. Admit in part, but add that the indication in Exhibit C was, "*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 declination to pay is consistent with Section 6 of the act in that Section 6 (d) specifically addresses this by stating that "*The imposition of a fee not consistent with subsections (6)(a) and (b) of this Act constitute a denial of access to public*

*records...*". The attempt of the Defendant at imposing a fee inconsistent with the Act by combining two requests into one request constituted a denial of the requests. A public body cannot charge a fee it is not allowed to charge.

8. Agree.
9. Deny. Stating that the Defendant is entitled to charge a fee for all parts of a request exceeding 50 pages at a rate reasonably calculated to reimburse its actual cost for reproducing and certifying public records...and *shall not exceed* 15 cents per page. This section further describes how to calculate the actual costs.
10. Agree. See Number 7 above.
11. Agree to the extent that the Defendant, a public body, was never asked to pay for any public records. Additionally, the Plaintiff, John Kraft, never attempted to invoice Defendant for any documents sent to them.

Should the Defendant have misstated this paragraph, Plaintiff DENIES.

Further stating that Plaintiff did attempt to pay, and that Plaintiff cannot speculate on the definitions of "timely manner" or "long after" as used by the Defendant.
12. Deny. The term "request" should be in the plural form as "requests" since there was more than one request. The payment asked of Plaintiff was in violation of the Act. Plaintiff cannot speculate as to how Defendant defines the phrase "*... to submit a payment as required by the Act*".
13. Agree.
14. Deny. Payment was provided by the Plaintiff, John Kraft. The method of payment was a check written by the Edgar County Watchdogs, Inc. to the Defendant.



15. Agree in part, adding that as Defendant stated in number 13 of their motion, the Defendant has never made a demand nor attempted to make a demand for payment after the first payment attempt was returned to Plaintiff. Without an additional demand for payment, which Defendant stated they reserved the right to do, any claims that Plaintiff failed to tender payment is without merit.
16. Deny. See number 15, above, and that "*Subject to the fee provisions of Section 6 of this act...*" actually refers to Section 6 of the Act which states in Section 6(d) that "*The imposition of a fee not consistent with the subsections (6)(a) and (b) of this Act constitutes a denial of access to public records for the purposes of judicial review*". The Defendants attempted to impose a fee inconsistent with the Act in that they treated two separate requests as one single request. Additionally, there is no provision in the Act permitting a public body to withhold records pending receipt of payment, or because of perceived nonpayment. Finally, the only items "*subject to the fee provisions*" of the Act are the ability of the public body to charge a certain fee amount, and the ability of the requestor to determine if a denial should the fees not be consistent with the Act.
17. Deny. Further stating that according to law, the Defendant did not provide all the requested records considered to be a public record of the public body. The Act does not stop at "*records in the possession of*" a public body, but also includes those records not in the physical possession of public bodies that are held by third parties.

Specifically, in that Section 7 (2) states "*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 the purposes of this act*". The requested records; a) Meet the definition of "public records" as defined in Section 2 (c) of the Act, and, b) The requested records are "records of funds" generally, and in particular relate to the use of public funds as explained in Section 2.5 of the Act.

Additionally, Defendant, by its failure to obtain the records from third parties, has granted those third parties the exclusive right to access and disseminate public records. This is a direct violation of Section 3(a) of the Act.

18. Deny. There is a genuine issue as to material fact as to whether or not; a) the defendant imposed a fee inconsistent with the provisions of the Act, and, b) that the Defendant failed to provide all requested records considered public records of the public body, and, c) that the Plaintiff himself made the demand under the Freedom of Information Act, made an attempt at payment of the request even though he was not required to since the fee was imposed inconsistent with the Act, and, d) that the Plaintiff made two separate requests as a request is defined in Section 2 of the Act.

19. Deny. Further stating that a) Defendant did attempt to impose a fee inconsistent with the Act by treating two separate requests as one single request thereby charging Plaintiff more than the allowable charges, and, b) it is impossible for a Requestor to violate the Act in this instance.



20. Deny. Further stating that a) Defendant did attempt to impose a fee inconsistent with the Act by treating two separate requests as one single request thereby charging Plaintiff more than the allowable charges, and, b) it is impossible for a Requestor to violate the Act in this instance.

21. Deny. The facts supporting the allegations of Counts 3 and 4 are included in paragraphs 5 through 8, and in exhibits C through F of the Complaint.

22. Deny. The facts supporting the allegations of Counts 1 and 2 are included in paragraphs 5 through 8, and in exhibits C through F of the Complaint.

Additionally, I will address the Affidavit of Deana Shields by addressing each paragraph in the Affidavit as such:

1) Agree.

2) Agree only to the extent that "*a response*" was submitted in a timely manner. Deny to the extent that "request" should be "requests", since there were two separate requests made.

3) Deny, in that there are no facts supporting the allegation that each request was sent at a time other than as shown in Exhibits A, B and C attached to Defendant Motion. As for the differences in times the requests were sent, the Plaintiff's copy states 9:58 and 10:07 a.m., while Defendant claims 11:58 and 12:07 a.m. The point at issue here is that there were two requests and they were 9 minutes apart.

4) Deny. The word "request" should reflect the plural form "requests". As a matter of law Defendant did not provide all the responsive records to the requests. Plaintiff even explained this point to the Defendant in a letter

dated May 4, 2012, and as stated in paragraph 17 (above) the response to the requests were incomplete and the Defendant should have contacted the credit card and cell phone companies to request the information from them, since those third parties are performing a governmental function under contract with the Defendant and the records are not otherwise exempt.

- 5) Deny. There were other matters redacted, such as the remaining pages of the requested statements and the "Invoice Number" on Phillips 66 statement(s) among other items.
- 6) Agree, noting that the return address on the envelope is printed as "John Kraft", the person tendering the payment.
- 7) Deny. All references to "request" should be in the plural form "requests", since there was more than one request. Defendant never mentioned payment was inadequate in the letter accompanying the return of the check, and that the Defendant never fully complied with the requests under the Freedom Of Information Act.

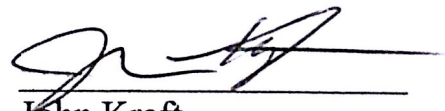
23. Deny. Plaintiff asked for various types of relief, all of which are authorized by the Freedom Of Information Act. For the two that Defendant mentioned: Plaintiff asked the Court to require Defendant prepare and affidavit, the authorization of which can be found in Section 11 (e). Plaintiff also asked the Court to declare the Defendant willfully, intentionally, and in bad faith attempted to impose a fee inconsistent with Section 6 (a) and (b), and in failing to properly deny Plaintiff's

FOIA requests, and in failing to provide the responsive documents to the FOIA requests, the authority of which can be found in Section 11 (j).

Additional response:

The United States Supreme Court has stated that it is equally well settled that "however inartfully pleaded," allegations in a *pro se* complaint are held to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30 L.Ed.2d 562 (1972)

**WHEREFORE**, the Plaintiff prays this court DENIES Defendant's Motion For Involuntary Dismissal for the reasons stated herein. In the Alternative, Plaintiff requests leave to file an Amended Complaint.

A handwritten signature in black ink, appearing to read 'John Kraft', is written over a horizontal line.

John Kraft  
Plaintiff, *pro se*  
7060 Illinois Highway 1  
Paris, Illinois 61944  
217-808-2527



# CERTIFICATE OF MAILING

I, the undersigned, under penalties of perjury as provided in the Code of Civil Procedure, do hereby certify that I mailed a true and exact copy of this **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR INVOLUTARY DISMISSAL** to the below stated individual(s); by placing the same properly addressed in the United States Mail at Paris, Illinois, postage fully prepaid, on this 4th day of February, 2014 in an envelope securely sealed, with proper postage prepaid, and legibly addressed:

Mr. Mark T. Petty  
Petty Law Office, Inc.  
111 E. Main St.  
P.O. Box 128  
Arcola, Illinois 61910



*August A. Griffin*  
2/4/14

  
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