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

JOHN KRAFT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 13-MR-53
	)	
ARCOLA TOWNSHIP,	)	
	)	
Defendant.	)	

MOTION FOR INVOLUNTARY DISMISSAL

COMES NOW the Defendant, ARCOLA TOWNSHIP, by its attorney, Mark T. Petty, and states the following for its Motion for Involuntary Dismissal:

1. That this motion is brought pursuant to the provisions of Section 5/2-619(9) of 735 *ILCS*.

2. That the Complaint is brought by the Plaintiff, JOHN KRAFT.

3. That the Plaintiff alleges in his Complaint (paragraph 3) that he served two request upon the Defendant on April 23, 2013 (Exhibits A & B attached to the Plaintiff's Complaint.)

4. That Exhibits A & B, copies of which are attached to this pleading show that there were requests made by JOHN KRAFT in behalf of the Edgar County Watchdogs, Inc.

5. That the Complaint in this cause of action has been filed by JOHN KRAFT, not by Edgar County Watchdogs, Inc. and, therefore, the Plaintiff has no standing to bring this action and by virtue thereof the Plaintiff's Complaint should be dismissed.

6. That the Plaintiff's requests, one having been emailed to the Defendant at 9:58 a.m. on April 23 and the other having been emailed to the Defendant nine minutes later at 10:07 a.m.

7. That the Plaintiff's Complaint, Exhibit C, contends that he has sent two Freedom of Information requests and the total costs for these requests is $4.20 and he indicated in Exhibit C, "I decline to pay for any copies and demand a complete set of documents pursuant to both of my FOIA requests." (Exhibit C to the Plaintiff's Complaint, copy attached.)

8. That Section 140/3 of 5 *ILCS* provides among other things, the following: "Subparagraph (b). Subject to the fee provisions of Section 6 of this Act, each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested."

9. That under Section 140/6(b) of 5 *ILCS* the Defendant is entitled to charge a fee for all parts of the request exceeding fifty pages at the rate of $0.15 per page.

10. That the Plaintiff's Complaint has attached to it an Exhibit C which is a correspondence from the Plaintiff wherein he maintains that he is only indebted to the Township for $4.20 and that "I decline to pay for any copies and demand a complete set of documents pursuant to both of my FOIA requests."

11. That the Defendant did not ever pay or attempt to pay

?

for the documents which were sent to him in a timely manner by the Defendant until long after he had filed the suit in the Circuit Court of Douglas County, Illinois, Sixth Judicial Circuit in the cause entitled *Kraft v. Arcola Township*, 2013-MR-31.

12. That no attempt was made to pay for the Freedom of Information Request until a letter was received on July 23, 2013 (postmarked July 22, 2013) at which time an attempt was made by the Plaintiff to submit a payment as required by the Act.

13. That this payment was returned to the Defendant on July 30, 2013, a copy of the transmittal letter is attached hereto and incorporated herein by reference, suggesting that suit had already been filed and the payment was tardy and the Court will settle the issue, the Township declined the payment and reserved the right to make a demand in the future.

14. That the payment was provided by Edgar County Watchdogs and not the Plaintiff, JOHN KRAFT.

15. That no additional attempt has been made by the Plaintiff or by Edgar County Watchdogs, Inc. to pay any sum since the return of the check, both prior to and after the filing of this lawsuit, 13-MR-53.

16. That since no payment was submitted at or near the time of the requests and since the Plaintiff expressly, in writing, advised that he was not going to make the payment, his request under the Freedom of Information Act is not valid and as a matter

of law the Defendant had no obligation to furnish anything since its obligation was "subject to the fee provisions" as set forth in Section 140/3 of 5 *ILCS*.

17. The Plaintiff complains that the response to the demand under the Freedom of Information Act was incomplete, but this is mere conjecture and attached hereto and incorporated herein by reference is the Affidavit of Deana Shields, together with a copy of the reply furnished to the Plaintiff showing that each and every document that the Plaintiff requested and which the Defendant had possession of was furnished to the Plaintiff.

18. That there is no genuine issue as to a material fact as to whether or not; a) the Plaintiff paid the fee required, b) whether the Defendant furnished the requested information, c) whether the Plaintiff ever made a demand under the Freedom of Information Act since he did so in behalf of a corporation rather than individually and made a belated attempt to pay for the request after filing suit on a corporate account, not his own, but instead an account in the name of the corporation that was listed on the request and d) the Defendant made one request rather than two requests as claimed.

19. That in the Plaintiff's Complaint he has alleged in Count Six that the Defendant has violated the Freedom of Information Act by its failure to follow Section 140/6 of 5 *ILCS* when, in fact, the Plaintiff is the person who violated this

section because he refused to make any payment or attempt to make any payment of any sum until suit was filed in this case.

20. That the Plaintiff asserts the same deficiency in Count Five.

21. That the Plaintiff has alleged in Count Four that the Defendant failed to comply with Sections 140/3 and 140/9 of the Freedom of Information Act, but has not alleged any facts to support this allegation and he has made the same unsupported allegation in Count Three.

22. That the Plaintiff's claims in Counts One and Two are not supported by any fact and there is no genuine issue that the Defendant's compliance with the request was not full and complete, all as can be seen from the Affidavit of Deana Shields.

23. That the Plaintiff request various items of relief, some of which are not authorized by the Freedom of Information Act, to the extent that subparagraph C asks the Court to require the Defendant to prepare an affidavit and to declare that the Defendant willfully, intentionally and in bad faith attempted to impose a fee not consistent with Section 6 of the Act and has asked in paragraph H to award the Plaintiff reasonable fees and all costs/fees incurred in litigating this suit as the Court deems just and equitable when, in fact, the Plaintiff is not entitled to any fees other than those which are provided for in the act and only court costs are allowed under Section 140/11(i)

5 *ILCS* and there are no fees provided for other than attorney fees, which the Plaintiff has not alleged that he has incurred.

WHEREFORE, the Defendant prays the Court to involuntarily dismiss the Complaint of the Plaintiff for the reason that it is barred by the affirmative matters avoiding the legal affect and/or defeating the claim of the Plaintiff for the reasons set forth hereinabove.

ARCOLA TOWNSHIP, Defendant

By _____
Mark T. Petty, Its Attorney

Petty Law Office, P.C.
Attorney for Defendant
111 E. Main St.
P.O. Box 128
Arcola, IL 61910
Telephone: (217) 268-3056
Fax: (217) 268-4898

CERTIFICATION

Under penalties as provided by law pursuant to §2.1-100 of the Code of Civil Procedure (Ch. 9/1 1991) the undersigned certifies that the statements made herein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

[redacted]

WILLIAM J. COGMAN

Exhibit A

-------- Original Message --------
Subject: FOIA Request #1: 4-23-2013
From: [redacted]gs.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: 21[redacted]
Email: [redacted]ogs.com

Exhibit B

-------- Original Message --------
Subject: FOIA Request #2: 4-23-2013
From: <[redacted]watchdogs.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: 21[redacted]
Email: [redacted]untywatchdogs.com

Exhibit C

-------- Original Message --------
Subject: FOIA Requests (Arcola Township)
From: <[redacted]countywatchdogs.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 x .15 = $0.75
The second one is 23 x .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 consilitutes 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: 21[redacted]
Email: [redacted]ntywatchdogs.com

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

From: <[redacted]untywatchdogs.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: 21[redacted]
Email: [redacted]watchdogs.com

——— Original Message ———
Subject: FOIA Request #2: 4-23-2013
From: [redacted]
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[redacted]
Email: [redacted]earcountywatchdogs.com

PETTY LAW OFFICE, P.C.

MARK T. PETTY

ANDREW L. PETTY

July 30, 2013

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

Re: Arcola Township

Dear Mr. Kraft:

I enclose the check that you sent for the Freedom of Information Act request. It is very tardy and it is too late. You have already filed suit and, therefore, the court will settle whether or not you complied with the Freedom of Information Act at the time of or before making your request. We decline this payment and reserve our right to make a demand in the future once the court has rendered its decision.

Thank you very much for your attention to this matter.

Very truly yours,

[redacted]

Mark T. Petty

MTP/cai

Enc.

EDGAR CO. WATCHDOGS
7060 IL HWY 1
PARIS, IL 61944

[redacted]

7-20-13
Date

Pay to the order of: Arcola Towns $ 4.26

Four dollars + 20/100 Dollars

Security features included. Details on back.

[redacted]

Two Signatures Required

[redacted]

For April 2013 FOIA Costs (2 requests)

⑆271187480⑆0000000164610⑈1019

111 E. MAIN STREET BOX 128 ARCOLA, IL 61910 (P) (217) 268-3056 (F) (217) 268-4898

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

JOHN KRAFT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 13-MR-53
	)	
ARCOLA TOWNSHIP,	)	
	)	
Defendant.	)	

AFFIDAVIT IN SUPPORT OF MOTION FOR INVOLUNTARY DISMISSAL

The undersigned, being first duly sworn, states the following under oath:

1. That she is an administrative assistant for the Arcola Township and has personal knowledge of the matters set forth hereinafter and she could testify competently thereto if she were called as a witness in this cause for the reason that she is an adult and not acting under any legal disability.

2. That the undersigned furnished in a timely manner a response to the request made by the Plaintiff on April 24 and as attached and described in Exhibits A and B to the Complaint.

3. That the actual response to the request under the Freedom of Information Act is attached hereto and incorporated herein by reference and as noted, it was not received or sent as claimed in Plaintiff's Complaint at 9:58 a.m. (Exhibit A) and 10:07 a.m. (Exhibit B), but instead Exhibit A was sent at 11:58 a.m. and Exhibit B was sent at 12:07 p.m.

4. That the response to the request under the Freedom of

Information Act contained each and every document that were in the possession and control of the Defendant Township and are complete.

5. That the only matters which were redacted on the bank statements of the Arcola Township were the PIN numbers and the account numbers and the same is true for the credit card statements.

6. That attached hereto and incorporated herein by reference is a copy of an envelope in which the Township received a payment and check, a copy of which is also attached.

7. That this payment and check were postmarked July 22, 2013 and received by the Township on July 23, 2013 at a time after litigation had already ensued and the Township rejected the payment in part because it was inadequate but also because it was submitted the Plaintiff had already filed suit and after the Defendant had already fully complied in a timely matter with the request under the Freedom of Information Act.

DEANA SHIELDS

Subscribed and sworn to before me this 2nd day of JANUARY, 2014.

Carol A. Ingram
Notary Public

John Kraft
7060 IL Hwy 1
Paris, IL 61944

CHAMPAIGN IL 618
22 JUL 2013 PM 1 L

Arcola Township
108 East Main St
Arcola, IL 61910

RECEIVED
JUL 23 2013
By

61910$1414

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 the foregoing instrument to the below stated individual; by placing the same properly addressed in the United States Mail at Arcola, Illinois, postage fully prepaid, on this 2nd day of January, 2014 in an envelope securely sealed, with proper postage prepaid, and legibly addressed:

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

Carol Ingram
CAROL INGRAM