

DISTRICT OFFICE
101 SOUTHPOINTE
SUITE B
EDWARDSVILLE, ILLINOIS 62025
618-307-9200
618-307-9202 FAX

SPRINGFIELD OFFICE
230-N STRATTON BUILDING
SPRINGFIELD, ILLINOIS 62706
217-782-8018



DWIGHT KAY

STATE REPRESENTATIVE • 112TH DISTRICT

VIA EMAIL AND US MAIL

September 3, 2014

John Schomberg
Counsel for the Governor
JRTC, 100 W. Randolph, Suite 16-100
Chicago, Illinois 60601

Dear Mr. Schomberg,

Since January of this year you, the Governor and other aides to the Governor have been instrumental in taking the lead to assure that numerous FOIA requests made by me were denied.

For your review, case law captioned, Regan Ebert vs Mark Thompson and Pamela Anderson is enclosed herewith. I call your attention to page 26, and quote from this page as follow: "The plaintiff is an elected official. Part of the duties of the plaintiff as an elected public official are to audit. As such, the elected public official is entitled to reasonable access to the books and records.....necessary to perform that function."

In short Mr. Schomberg, as an elected official I do have an overwhelming interest in the disclosure of information that has been requested on numerous occasions to conduct my constitutional mandated duties as a state legislator that sits as a member of the Human Services Appropriations Committee.

Based on the Regan case, and the penalty provisions of HB 4216, effective September 5, 2014, I formally demand that you, or the Governor, instruct all parties that have not provided information though FOIA requests or related letters to comply with all of my requests.

Your failure, or the Governor's failure to comply immediately with my demand will be viewed as your or the Governor's utter disregard for the law, and a strong indication that one or both of you are purposely keeping information from me that could prove wrongdoing within the Department of Health and Human Services. Penalty provision(s) of HB 4216 is a Class 4 felony.

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight Kay".

Dwight Kay
State Representative

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

REGAN EBERT,

Plaintiff,

vs

MARK THOMPSON and
PAMELA ANDERSON,

Defendants.

No. 94 CH 4402

REPORT OF PROCEEDINGS had at the hearing
of the above-entitled cause, before the Honorable
THOMAS DURKIN, Judge of said Court, on the 20th
day of December, 1994.

PRESENT:

DAVID PLATEK,
appeared on behalf of the Plaintiff;

GREGORY ROGUS,
appeared on behalf of the Defendants.

JOAN ECKER, CSR
Official Court Reporter
Law/Chancery Division
Circuit Court of Cook County

1 THE COURT: Ebert versus Thompson.

2 MR. ROGUS: Good afternoon, your Honor.
3 Greg Rogus, R-o-g-u-s, on behalf of both
4 defendants.

5 MR. PLATEK: David Platek, P-l-a-t-e-k,
6 on behalf of the plaintiff. This is Ebert versus
7 Thompson, 94 CH 4402.

8 MR. ROGUS: Before the court this
9 afternoon are cross motions for summary judgment.
10 The defendants filed first, so I gather I should
11 argue first.

12 The plaintiff in this particular case is
13 a trustee for the Town of Maine. She is an
14 elected official.

15 The two defendants are also affiliated
16 with the Town of Maine. Mark Thompson is the
17 township supervisor, and Pam Anderson is the
18 administrator for the Town of Maine.

19 Mr. Thompson is also an elected
20 official. Ms. Anderson is an appointed official.
21 She is not an elected official.

22 The whole issue arises out of the
23 plaintiff's demand upon the defendants to produce
24 and turn over to the plaintiff for the plaintiff's

1 possession certain lists of names, addresses, and
2 some other information pertaining to members of
3 certain organizations that are provided certain
4 services by the township government.

5 The groups --

6 THE COURT: Were not the organizations
7 in fact created by the township?

8 MR. ROGUS: Yes. The Maine Seniors, et
9 cetera. That is correct.

10 There are a variety of services which we
11 have outlined in the one exhibit that we attach to
12 our motion and are provided to those folks in
13 those organizations.

14 The plaintiff, in her role as a trustee,
15 demanded that she be provided with a copy of the
16 list.

17 Throughout her written submissions to
18 the court, she frames the issue a little more
19 broadly. Namely, that she contends that she is
20 entitled to unfettered access to the information
21 contained on those lists.

22 That is really not the issue. The issue
23 is far narrower. The question is whether she's
24 entitled to actual physical possession of those

1 lists herself --

2 THE COURT: Or copies thereof.

3 MR. ROGUS: Or copies thereof, because
4 she has not been denied access.

5 She was given an opportunity to review
6 the lists by Mr. Thompson. We have outlined not
7 only the sequence of events, the operative dates
8 in our motion, but also the conditions that were
9 attached.

10 She elected not to avail herself of the
11 option that Mr. Thompson, the township supervisor
12 who in effect functions as the chief executive,
13 chief operating officer of the township, attached.

14 The crux of the matter is she is
15 entitled, in her role as a trustee, to carry out
16 her functions of auditing and examining things
17 bearing upon financial issues, financial
18 expenditures, et cetera.

19 That is in the statute that delineates
20 her duties and responsibilities as a trustee.

21 The statute, however, which created her
22 position and which delineates her responsibilities
23 and duties does not specify that she is entitled
24 to simply be given possession of either the lists

1 or copies of the lists, or for that matter,
2 anything that arguably could be designated as
3 township property.

4 Entitled to examine it? Yes. Entitled
5 to audit? Yes. But entitled to outright
6 possession? No.

7 THE COURT: Have you ever been audited
8 by the IRS?

9 MR. ROGUS: I luckily have not.

10 THE COURT: I will tell you I have when
11 I was in practice. Needless to say, I came out
12 clean as a whistle or I wouldn't be bringing it
13 up.

14 If they came to my office and I said to
15 the IRS, "No problem. You can come over here and
16 look at the documents I have any time you want,
17 but I'm not going to let you copy them."

18 What do you think they'll do?

19 MR. ROGUS: Well, they would probably
20 not agree with you, for one thing.

21 THE COURT: Do you think they would
22 think my position was reasonable?

23 MR. ROGUS: It would depend upon the
24 auditor, but my guess is that most of auditors

1 would disagree.

2 THE COURT: Continue with your argument.

3 MR. ROGUS: There are certain issues and
4 certain considerations with respect to why we do
5 not feel the plaintiff is entitled to an
6 injunction from this court.

7 First of all, these lists themselves do
8 not contain financial information. They contained
9 names, addresses, phone numbers, identifying-type
10 information.

11 In addition, they contain other
12 sensitive information with respect to some of the
13 individuals on the lists, such as medical-related
14 information.

15 The reason that that information would
16 be on there is because, as we point out as part of
17 the programs, part of the activities provided are
18 trips, minivacations, weekends here and there, and
19 what the township does is it maintains information
20 in the event that one of the seniors who wishes to
21 avail themselves of that particular activity, if
22 they should, during the course of that activity,
23 be in need of, for example, medical attention, the
24 township would know how to treat the situation.

1 So all that is very personal and
2 sensitive-type information.

3 We have raised in our written submission
4 to the court the privacy interests that is thereby
5 implicated.

6 People do not want, necessarily, that
7 type of information being disclosed about
8 themselves.

9 People do not necessarily want the fact
10 that they may be a senior citizen disclosed.

11 They may not necessarily want the fact
12 that they are a senior citizen and either divorced
13 or single disclosed. These are personal matters.

14 THE COURT: You are not going out and
15 dragging them in off the street. They are coming
16 in voluntarily and disclosing this information
17 voluntarily by availing themselves of these
18 programs, are they not?

19 MR. ROGUS: They are. Not all of them
20 are going to avail themselves of all the programs
21 or of all the activities.

22 However, the lists that the plaintiff
23 seeks are all-encompassing. She wants all names,
24 all information. It's our understanding she wants

1 this court to order us to turn them over.

2 THE COURT: All names and all
3 information of what? All seniors?

4 MR. ROGUS: All seniors and options and
5 options plus one.

6 THE COURT: The ones who participate in
7 all the programs?

8 MR. ROGUS: Well, once again, there are
9 people who have given their names who do not
10 necessarily participate in all aspects of all
11 programs.

12 THE COURT: But they come in and sign up
13 for the programs.

14 MR. ROGUS: They do.

15 THE COURT: You are not standing on the
16 corner dragooning these people.

17 MR. ROGUS: We are not.

18 So we have raised the privacy interests.

19 We have pointed to the statute which, once again,
20 delineates the duties and responsibilities.

21 We feel that she is stretching the
22 meaning and intent, not to mention the language,
23 of that statute entirely too far in claiming that
24 as part of her role as a trustee, she is entitled

1 to outright possession of these lists.

2 From Day One we, the defendants, have
3 made it known to her she is entitled to examine
4 the lists under the conditions that we address in
5 our motion, namely, nondisclosure.

6 There is a concern also about the use of
7 the list for reasons other than township-related
8 business which we are seeking to protect against
9 through the nonturnover of the lists or copies of
10 the lists themselves.

11 We have cited to the court's attention
12 several cases in our motion.

13 The one arising from the First District
14 Appellate Court, the Margolis case, I believe,
15 implicates a balancing approach that the court is
16 to use, a number of factors that the court is to
17 take into account, including, for example, the
18 privacy rights of the persons involved as well as
19 another factor being whether there are less
20 intrusive means.

21 We would respectfully submit that there
22 are far less intrusive means for Ms. Ebert to
23 carry out her duties that do not mandate, require
24 or allow her arguably to have possession of these

1 lists.

2 She can, for example, attend some of
3 these functions and talk to the people. No one is
4 preventing her from doing that.

5 She can, if she so desires, submit a
6 mailing, a survey, a letter, a questionnaire to be
7 directed out to the membership through proper
8 organizational channels.

9 She has apparently not availed herself
10 of that less-intrusive means of auditing, if you
11 will, if you want to conclude that that would
12 somehow play into her role as auditor on behalf of
13 the township. She hasn't availed herself of that.

14 So there are far less intrusive means of
15 enabling her to carry out the functions as an
16 elected official.

17 Injunctive relief is, of course, very
18 drastic. You are ordering someone to do something
19 because there is arguably some inadequate means
20 for the plaintiff to otherwise achieve that which
21 the plaintiff is attempting to achieve.

22 Here she has a number of far less
23 intrusive means of accomplishing her goal and
24 carrying out her duties and living up to her

1 responsibilities as an elected official, without
2 necessarily creating problems from the standpoint
3 of jeopardizing privacy interests of other persons
4 affected in the event this court were to order
5 that Mr. Thompson and Ms. Anderson turn over those
6 lists to her and that she had actual physical
7 possession of them.

8 So for those reasons, based on the cases
9 we've cited, based upon our arguments with respect
10 to the language and the intent of the statute
11 regarding township officials, and in particular,
12 township trustees, we respectfully argue that she
13 is not entitled to this injunction as a matter of
14 law, and therefore we should accordingly be
15 allowed summary judgment in this case.

16 THE COURT: Counsel?

17 MR. PLATEK: If I may, your Honor, first
18 I'd like to say that I think this case is ripe for
19 disposition by summary judgment. There are cross
20 motions before the court.

21 I think that clearly the issue before
22 you is one of law, and the facts are fairly well
23 established.

24 The pleadings are under oath, and to the

1 extent that our arguments go beyond the pleadings,
2 they're fairly consistent in the facts. I don't
3 think there is any question about that.

4 THE COURT: To be honest, I was
5 distressed by your pleadings, certainly the
6 response of -- your pleadings were essentially a
7 polemic.

8 Obviously here I'm not so naive to not
9 realize that sub rosa there are matters here that
10 have very little to do with whether or not those
11 lists ought to be copied, but rather have to do
12 with apparent political differences between the
13 majority and minority interests of the trustees,
14 which matters are probably best left to the voters
15 in the next election.

16 But certainly the pleadings contained
17 much excessive polemicized material. They really
18 don't belong in the pleadings.

19 I think the defendant, rather than
20 coming in to strike and merely making note of it,
21 was certainly correct in doing that.

22 I want to tell you that. That has
23 nothing to do with the summary judgment. But
24 unfortunately, sometimes I decide to speak my

1 mind, and this is one of the occasions.

2 You may proceed with your argument.

3 MR. PLATEK: Your Honor, the reason that
4 the pleadings were laid with those facts is there
5 is no question --

6 THE COURT: Facts? They're not facts.
7 There allegations; they're conclusions.

8 MR. PLATEK: They're also supported,
9 Judge, in large part by the minutes of the various
10 meetings that the defendant had attached to the
11 originally-filed motion for summary judgment.

12 THE COURT: Let me give you an example
13 of one. I'm sure you don't have meetings for
14 this, nor is it necessary:

15 "... has become a vocal opponent of the
16 gross and flagrant ways she has discovered what is
17 in the budget of the Town of Maine."

18 What does that have to do with what is
19 before us?

20 This is a political speech.

21 MR. PLATEK: Your Honor, the political
22 speech that concerns the plaintiff is that the
23 access to Maine Township resources by the
24 defendant to continually politicize their

1 positions with respect to the members of these
2 organizations.

3 THE COURT: I saw what you have in your
4 hand. There is certainly -- I wasn't suggesting
5 that the political ramifications were only on one
6 side of the case.

7 They usually exist on both sides.

8 MR. PLATEK: But it is a political case,
9 and that is precisely the point. I don't think
10 either the plaintiff nor the defendant is asking
11 your Honor to involve this court in --

12 THE COURT: It is a political case to
13 you. It's a political case to him. To me it's a
14 case of whether or not a trustee has a right to
15 copies of the records.

16 MR. PLATEK: That is the only issue
17 before us.

18 THE COURT: Continue with your argument
19 on that.

20 MR. PLATEK: Judge, I think the case is
21 decided by Wayne Township Board of Auditors versus
22 Vogel, 68 Il.Ap.2d, 14 which is cited in our
23 brief.

24 The position of the defendant has been,

1 in the beginning of this lawsuit, that, number
2 one, we are subject to an FOIA type of request for
3 information, and under the FOIA, the bootstrap
4 argument goes that when there is a privacy
5 concern, the court can become involved in
6 determining whether or not the balancing tests set
7 forth in the various cases should dictate that the
8 information be disclosed.

9 The plaintiff's position, your Honor, is
10 that first of all, we're talking about a trustee
11 who stands on an equal footing with the supervisor
12 of the board of trustees, Mark Thompson.

13 They were both elected in the same
14 general election. They hold essentially the same
15 office.

16 I'm sure your Honor is familiar with the
17 statute. The township code simply provides for a
18 supervisor position, most likely as chairman of
19 the board of these trustees, and have the
20 additional duties and responsibilities of actually
21 running the day-to-day business of the town, much
22 as the president of a corporation would run the
23 corporation.

24 However, when these people sit as a

1 board, they each have an equal vote and they have
2 an equal voice in what is going on in the
3 community.

4 What has happened with respect to these
5 three lists and this information is that Mark
6 Thompson has been in favor of certain programs
7 that would require the expenditure of large
8 amounts of money.

9 My client, in the discharge of her duty
10 as trustee, who is charged with the duty to audit
11 these accounts, simply made the request to have
12 access to information so that she could make an
13 independent determination as to whether these
14 expenditures were necessary or not.

15 Now, there have been statements in the
16 annual report published by the Town of Maine, as
17 well as in the minutes of meetings, that these
18 programs that Defendant Mark Thompson has been in
19 favor of are required because members of these
20 groups require these services; we have so many
21 members and we need these expenditures.

22 When my client makes inquiry during the
23 meetings of the town, she is told that she can't
24 have access to this list.

1 There are various motions made, a whole
2 series of motions made to either restrict her
3 access, limit her access or outright deny it.

4 They all pass three-to-two, and she has
5 no remedy.

6 That is why we're before this court,
7 because there is no adequate remedy, either in the
8 political process or at law, and we're here,
9 Judge, seeking your Honor to enter an order
10 directing the defendants in their individual
11 capacity to make this information freely and fully
12 available to my client.

13 Curiously, what counsel is saying in his
14 argument, and it's also clear from the facts
15 before you, is that Pamela Anderson, an employee
16 of the Town of Maine, has access to this
17 information.

18 She can go to the database; she can
19 access it; she can use it. She has completely
20 unrestricted access to the photocopying,
21 downloading this information, printing it,
22 generating mailing, doing anything she wants with
23 it.

24 But an elected official, who stands on

1 an equal footing with the supervisor of the town
2 as well as other members of board, can't.

3 Counsel suggested that, "Well, she has
4 other alternatives. We have offered her the
5 opportunity to view the list."

6 Well, Judge, the claim is there are over
7 5,000 members in one group and several thousand in
8 the other.

9 I've taken the deposition of Sue Nushill
10 in this case, and I've seen the list.

11 Counsel made a statement during his
12 argument that there is sensitive information about
13 medical and other information on these lists.

14 As an officer of the court, Judge, I can
15 report that the only lists that I saw which I was
16 told were the lists --

17 THE COURT: You are aware that this is a
18 motion for summary judgment.

19 MR. PLATEK: Yes.

20 -- contained name, address, and phone
21 number.

22 THE COURT: I can't consider it in a
23 motion for summary judgment.

24 MR. PLATEK: I just thought I'd report,

1 Judge. Counsel made the statement --

2 THE COURT: You should have objected if
3 he made a statement of facts outside the record.
4 I would have sustained it.

5 You're stuck with the record here, the
6 pleadings and the affidavits.

7 MR. PLATEK: The lists contain -- I
8 didn't count. I think my guesstimation was
9 correct, that there were probably 5,000 names on
10 the various lists.

11 It is inconceivable that my client would
12 have any meaningful access if she were simply to
13 be permitted to sit down and look at them.

14 Even if she is relegated to an FOIA
15 request, there is no case that holds simply name,
16 address, telephone number, access information that
17 was voluntarily given by these people of the Town
18 of Maine to use for township purposes, in any way,
19 shape or form gives rise to a concern of privacy.

20 And I think that on a motion for summary
21 judgment, certainly the burden would be upon the
22 defendant to show that by clear and convincing
23 evidence, and I don't think there is anything in
24 support of such a conclusion or a finding by this

1 court other than the naked allegation that "We're
2 afraid."

3 But if you look at what is really going
4 on here, and these are facts that they have pled
5 or admitted, they're afraid that the list is going
6 to escape somehow and wind up as a mailing list or
7 improperly used.

8 But there are no controls alleged on the
9 employees of the town, who have free access to it,
10 and the only person that is apparently being
11 denied here is my client, who is an elected
12 official charged by statute with a duty to audit
13 these accounts and find out how and why the town
14 spends its money.

15 More importantly, Judge, I think that
16 Wayne Township versus Vogel just clearly hits the
17 nail right on the head.

18 In that case the court was presented
19 with a similar situation where a supervisor of a
20 board of trustees didn't want to provide
21 information which probably could have been of a
22 sensitive nature.

23 It was general assistance information
24 about recipients in the community who were

1 receiving general assistance.

2 There are cases under federal law, FOIA,
3 that say that those types of lists might give rise
4 to privacy interests.

5 But even in that case, when there was a
6 list of admittedly sensitive information at stake,
7 the Appellate Court had no problem in just
8 deciding almost summarily that as an elected
9 public official, there should be a free exchange
10 of information, period, and there is nothing more
11 to argue about.

12 And over the concerns of the supervisor
13 that this list would be misused, the Appellate
14 Court said, and I quote:

15 "It wasn't up to one or the other of
16 them to be the keeper of the conscience of all the
17 other people or to impose extra statutory
18 requirements upon this exchange of information
19 among public officials."

20 And I just think that this is this case
21 in a nutshell.

22 I represent an elected public official,
23 who should be able, within reasonable limits, of
24 course, to go into the Town of Maine just like any

1 other trustee, including Mark Thompson, as
2 supervisor, and say,

3 "I want to look in that file cabinet, I
4 want to pull out that drawer, I want to take out
5 that file, I want to photocopy it, and I want to
6 call these people, and I want to find out what's
7 going on in my town."

8 Because it isn't Thompson Town and it
9 isn't Andersonville.

10 This is the Town of Maine, and
11 regardless of losing votes on the board of
12 directors, which my client will have to suffer for
13 the rest of her term, she has the right as an
14 elected official to have the same access to all of
15 that information as everyone else who is either an
16 elected official or employee of the town.

17 THE COURT: Do you wish to respond?

18 MR. ROGUS: Very briefly, your Honor.

19 First of all, Ms. Ebert is not prevented
20 from examining annual reports, vouchers, the
21 records of expenditure.

22 She has total unfettered access as a
23 trustee to examine that information and going
24 through it as she wishes.

1 There is absolutely no issue in this
2 case with respect to any alleged shackles being
3 placed upon her in her ability to carry out that
4 aspect of her function.

5 She does have a remedy in terms of being
6 able to go through those types of records. She
7 does have a remedy in terms of, once again, if she
8 wants to get information through -- to the people
9 on the list.

10 No one is stopping her from requesting,
11 making out a mailing, and sending out a
12 questionnaire, et cetera, et cetera.

13 As I point out in the principal part of
14 my argument, with regard --

15 THE COURT: I don't understand. If she
16 wants to send out a mailing, what should she do?
17 Should she deliver that to --

18 MR. ROGUS: -- to Ms. Nushill.
19 Ms. Nushill is the one in whose custody these
20 lists are.

21 Nothing, no one is stopping Ms. Ebert
22 from requesting that a letter or a questionnaire,
23 et cetera, be sent out through those channels.
24 She has not made any effort to do so.

1 With respect to counsel's remarks about
2 Pam Anderson having unfettered access, Pam
3 Anderson does not have unfettered access. Those
4 records are kept in the custody of Sue Nushill.

5 There is no evidence in the record
6 showing that these records, names, lists, et
7 cetera, are somehow being bandied about
8 recklessly, carelessly without anyone seeing what
9 the heck is going on within the township
10 government.

11 They are in Sue Nushill's custody.
12 There is nothing in the record to show otherwise.
13 Pam Anderson doesn't have the list in her
14 possession. Mark Thompson doesn't have the list
15 in his possession.

16 There is nothing in the evidence in the
17 case to show otherwise.

18 As for counsel's remarks regarding
19 freedom of information, one thing I would point
20 out somewhere, I think it was either in his
21 response to my motion or in his cross motion
22 directed to me, but he indicated on behalf of his
23 client that he's not bringing this case, this
24 lawsuit, on her behalf as a citizen.

1 He's strictly bringing it on her behalf
2 as an elected official.

3 Now, whether or not that has some effect
4 on the applicability of the Freedom of Information
5 Act, quite frankly, I'm not certain.

6 That is one reason why I addressed their
7 case in terms of the limits placed upon what she
8 as a trustee is entitled to under the statute
9 defining her position.

10 If freedom of information does in fact
11 play in, however, we have cited at page five of
12 our motion the applicable section that indicates
13 why freedom of information would protect this
14 particular information as being sought by the
15 plaintiff in this case from mandatory disclosure
16 if the injunction is to be issued.

17 Those are all the remarks I have.

18 MR. ROGUS: May I?

19 THE COURT: No. Not necessary.

20 All right. The court has heard the
21 arguments and suggestions of counsel and
22 considered the facts, well-pleaded, and the
23 affidavits in support thereof.

24 Like counsel, I am at a loss to

1 determine whether or not the Freedom of
2 Information Act applies in this case.


3 But in light of the court's ruling, it
4 really doesn't make any difference.

5 I've looked in the Webster's New
6 Universal Unabridged Dictionary for the definition
7 of the word "audit":

8 "Audit" is "an examinatin of an account
9 or of accounts by proper officers or persons
10 appointed for that purpose who compare the charges
11 with vouchers and examine witnesses and report the
12 result."

13 The plaintiff is an elected public
14 official. Part of the duties of the plaintiff as
15 an elected public official are to audit.

16 As such, the elected public official is
17 entitled to reasonable access to the books and
18 records necessary to perform that function. That
19 reasonable access cannot be doled out by the
20 teaspoonful.

 RED FLAG

21 Counsel for the trustee concedes that
22 there are limits, and there is no question in my
23 mind that at some point the access, for example,
24 the trustee doesn't have the right to call the

1 janitor to open up the building at the taxpayers'
2 expense at 3:00 in the morning for her to make
3 those examinations.

4 The examinations have to be reasonable,
5 and the question is, is a copy of a list a
6 reasonable way to examine books and records that
7 the trustee has a right to, and the answer is
8 unequivocally, "Yes."

9 It is a reasonable way to do that. The
10 trustee has a right to do that.

11 However, in light of the fact I have
12 made the finding and because I have some doubt in
13 my own mind concerning the applicability of the
14 Freedom of Information Act to a trustee, to an
15 elected trustee, I would examine it further based
16 upon my goal, purpose, as a director, which is
17 reported at 180 Il.Ap.3d 1084, and the four
18 factors they talk about are the plaintiff's
19 interest in disclosure as factor No. 1.

20 "Clearly, an elected trustee has an
21 overwhelming interest in disclosure of information
22 necessary for her to conduct her function."

23 No. 2 is the public interest in
24 disclosure. Same thing is true there: The public

1 has an interest in seeing that their elected
2 official perform the functions they were elected
3 to do.

4 The fact that there appears to be a
5 great deal of political animus between the
6 majority and minority interests in the board of
7 trustees perhaps does does an even better job of
8 serving the citizens of the Town of Maine, but
9 that is a decision they'll make, not me.

10 I have no doubt that they keep very,
11 very careful watch upon each other as a result of
12 political animus that does exist.

13 No. 3 is the degree of the invasion of
14 personal privacy. This is de minimus at best.

15 These are seniors who no doubt are
16 coming there to play bingo, bunco or some other
17 form of entertainment, availing themselves of an
18 opportunity to socialize.

19 This is clearly not the type of
20 confidential information that would cause one to
21 feel that the disclosure to an elected trustee is
22 such that it would somehow damage the citizenry of
23 the Town of Maine.

24 It may very well be that, as suggested

1 by the defendants, that the trustee could abuse
2 this for commercial purposes, for mailing
3 diatribes.

4 That may very well happen. That is
5 probably one of the unfortunate aspects of the
6 information society at large, not of this
7 particular disclosure that is about to take place.

8 No. 4 is the availability of alternative
9 means. The alternative means suggested by the
10 defendant in this case is not the reasonable
11 available alternative means. The preparation of
12 the list and the dissemination to the trustee is.

13 Judgment is entered in favor of the
14 plaintiff. Prepare an order.

15 MR. ROGUS: Your Honor, I have a
16 question before the court with regard to the scope
17 of the relief being offered here.

18 THE COURT: One of things that -- I
19 think I know where you're going.

20 This lawsuit is being tried on the
21 pleadings. There were matters interjected that
22 were not argued, weren't briefed, and they are not
23 included in the order.

24 MR. ROGUS: So we're only talking about

1 the particular list?

2 THE COURT: The three programs that were
3 named.

4 MR. ROGUS: Are we also only talking
5 about disclosure to the plaintiff herself with
6 limits being placed upon who she can then --

7 MR. PLATEK: No, no.

8 MR. ROGUS: -- turn around and disclose
9 that information to?

10 THE COURT: Those limits will be decided
11 by the voters. If she abuses her office as
12 trustee, there is some possibility -- I'm not
13 suggesting it will occur -- there is some
14 possibility, I suppose, that it would occur.

15 I'm sure that is a matter that will be
16 brought to the attention of the voters.

17 MR. PLATEK: The only other remaining
18 issue that wasn't before the court on these
19 pleadings, will your Honor reserve jurisdiction
20 for the purpose of entertaining a petition for
21 attorneys fees and costs?

22 THE COURT: Costs, you're entitled to
23 costs. This is certainly not a bad-faith -- there
24 is no bad-faith position on the part of the

1 defendants here.

2 MR. PLATEK: I wasn't thinking of
3 Rule 137, your Honor, but the defendants had pled
4 FOIA as a defense and said that this is an FOIA
5 case.

6 Certainly, under the Freedom of
7 Information Act the prevailing party would be
8 entitled to attorneys' fees.

9 THE COURT: I decided on both grounds.
10 To be honest, I'm not sure that the -- you can
11 come in on a petition on fees. I'm not sure FOIA
12 applies here.

13 MR. PLATEK: I'm not sure, either. But
14 if your Honor reserves jurisdiction --

15 THE COURT: I'll reserve jurisdiction.

16 MR. ROGUS: We'll cross that bridge when
17 we come to it, I guess.

18 THE COURT: Under Rule 307, the court
19 finds there is no basis for delaying any appeal in
20 this matter. Judgment is entered.

21 MR. PLATEK: Thank you, your Honor.

22 PROCEEDINGS CONCLUDED

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