

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

KIRK ALLEN,

Plaintiff

v.

ARCOLA TOWNSHIP,

Defendant.

2014-MR-33

COPY

FILED

AUG -7 2014

Janis Miller
CLERK OF THE CIRCUIT COURT
DOUGLAS COUNTY, ILLINOIS

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

Now comes Plaintiff, KIRK ALLEN, by Yasmeen N. Baig of Frank H. Byers, II, Ltd., his attorneys, for his Complaint for Declaratory Judgment and Injunctive Relief, in accordance with Freedom of Information Act ("FOIA"), 5 ILCS 140/1, *et seq.*, and states as follows:

1. Plaintiff Kirk Allen is an Illinois resident, and resides in Edgar County.
2. Defendant Township of Arcola is a public body, as defined in 5 ILCS 140/2(a).
3. On May 6, 2014, Plaintiff served a FOIA request on Defendant, seeking copies of public records. A true and correct copy of the request is attached hereto and incorporated herein as Exhibit A.
4. In a letter dated May 14, 2014, Defendant improperly denied part of the FOIA request. A true and correct copy of the request is attached hereto and incorporated herein as Exhibit B.
5. Defendant states that item number 1 of the FOIA request is a "question", when it is actually a request for copies of public records.
6. As of July 24, 2014, Defendant has failed to provide all responsive records to the May 6, 2014 FOIA request.

7. Section 11(a) of the Illinois Freedom Of Information 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."*

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

9. Plaintiff reaffirms paragraphs 1 - 8 as though fully restated herein.

10. Plaintiff is being denied his legal right to inspect public records by Defendant's failure to produce the records requested on May 6, 2014.

11. Plaintiff has no adequate remedy at law.

COUNT TWO

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

12. Plaintiff reaffirms paragraphs 1 - 8 as though fully restated herein.

13. Defendant improperly denied the FOIA request by their failure to properly respond in accordance with 5 ILCS 140/3 and 5 ILCS 140/9.

14. 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.*;

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

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;

D. Order Defendant to prepare, forthwith, an affidavit identifying with specificity any and all public records responsive to Plaintiff's FOIA request 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;

E. Declare Defendant acted willfully, intentionally, and in bad faith in the failure to respond to and to provide responsive documents to Plaintiff's FOIA request;

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

KIRK ALLEN, Plaintiff

BY: FRANK H. BYERS, II, LTD., Attorneys


BY: 
YASMEEN N. BAIG, Attorney at Law

Exhibit A

Arcola Township

From: Kirk Allen [Kirk@illinoisleaks.com]
Sent: Tuesday, May 06, 2014 8:34 PM
To: arcolats@arcola-il.com
Subject: FOIA Request

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

1. Copy of all FOIA requests received since January 1st, 2013 to include the notation on the requests that shows the computed day on which the period for response will expire. **(I am not seeking the responsive documents to those requests.)**
2. Total number of full time employees for Arcola Township. (Not including any elected township position)

The purpose of the request is to access and disseminate information regarding the legal rights of the general public and is not for the principal purpose of personal or commercial benefit.

As outlined in FOIA, documents *shall* be furnished *without charge or at a reduced charge*, as determined by the public body, if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. *Waiver or reduction of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit.*

I am requesting the records be provided in electronic format if that is the method in which they are stored.

If they are not stored electronically I do ask that they be copied and converted into an electronic file if the copying device has that capability.

Thanks
Kirk Allen
PO Box 593
Kansas, IL 61933

Exhibit B

Arcola Township Office
108 East Main Street
Arcola, Illinois 61910

Mr. Kirk Allen
PO Box 593
Kansas, Illinois 61933

May 14, 2014
RE: FOIA

Dear Kirk,

Please find enclosed the following as a response to your May 6, 2014 FOIA request.

1. There are No documents to provide a response to this question!
2. The Township and Road District each have 1 full time employee.

Sincerely,

William D. Coombe – Town Clerk
Arcola Township

WDC/dks

PROOF OF SERVICE

YASMEEN N. BAIG, attorney for the Plaintiff in the above-entitled matter, hereby certifies that she did on the 5th day of August, 2014, mail by first class, United States Mail, postage fully prepaid, a copy of the above addressed to:

Arcola Township
108 East Main St.
Arcola, IL 61910


YASMEEN N. BAIG

FRANK H. BYERS, II, LTD.
Yasmeen N. Baig
Attorney-at-Law
160 W. Main St.
Decatur, IL 62523
T: (217) 875-3301
F: (217) 875-3524
ybaig@fhblaw.com