

IN THE CIRCUIT COURT
FOR THE FIFTH JUDICIAL CIRCUIT
CLARK COUNTY, MARSHALL, ILLINOIS

JOHN KRAFT)
)
 Plaintiff)
)
 v.)
)
 Clark County Park District) 2014-MR-____
)
)
 Defendant)

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

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, Plaintiff states and alleges as follows:

INTRODUCTION

1. This is a Complaint under the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1 *et seq.*

2. Pursuant to the fundamental philosophy of the American constitutional form of government, the General Assembly has declared it to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent

them as public officials and public employees consistent with the terms of the Act. 5 ILCS 140/1.

3. Restraints on access to information, to the extent permitted by FOIA, are limited and narrow exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of the people. *Id.*

4. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2.

5. All records relating to the obligation, receipt, and use of public funds are public records subject to inspection and copying. 5 ILCS 140/2.5.

6. A public body is required to respond to FOIA requests within five business days, or, when specific criteria are met and the public body properly claims an extension of time within the five-day deadline, within another five business days. 5 ILCS 140/3(d), (e). Failure to respond to a FOIA request in a timely manner constitutes a denial. *Id.*

7. 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. 5 ILCS 140/3(a).

8. A public body is required to promptly respond to the requester, subject to any fee provisions of Section 6, with a copy of the public record required to be disclosed by subsection (a) of this Section. 5 ILCS 140/3(b).

9. 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."*

10. Under FOIA, Section 11(h), *"except as to causes the Court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way."*

11. If the Court determines that a public body willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith, the Court shall impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence. 5 ILCS 140/11(j).

12. Defendant Clark County Park District has willfully and intentionally violated FOIA by failing to properly respond to a FOIA request by Plaintiff John Kraft for non-exempt records.

PARTIES

13. Plaintiff - John Kraft, *pro se*. The plaintiff is an Illinois resident, and resides in the County of Edgar.

14. Defendant is the Clark County Park District, a public body as that term is defined in FOIA.

PLAINTIFF'S FOIA REQUEST AND DEFENDANT'S DENIAL

15. On December 5, 2014, Plaintiff served a FOIA request on Defendant office of the Clark County Park District seeking copies of public records. A true and correct copy is attached hereto and incorporated herein as Exhibit A.

16. On December 12, 2014, Defendant responded to Plaintiff's FOIA request with an improper denial for copies of public records. A true and correct copy is attached hereto and incorporated herein as Exhibit B.

17. On December 12, 2014, Plaintiff responded to the denial in an email sent to Defendant asking Defendant to read the beginning paragraph of Section 7. A true and correct copy is attached hereto and incorporated herein as Exhibit C.

18. On December 12, 2014, Plaintiff responded to the denial in a second email sent to Defendant asking Defendant to comply with the request for records. A true and correct copy is attached hereto and incorporated herein as Exhibit D.

19. As of December 22, 2014, Defendant provided no further response.

COUNT ONE

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

20. Plaintiff reaffirms paragraphs 1 - 19 as though fully restated herein.

21. Plaintiff is being denied his legal right to inspect public records by Defendant failure to produce the records requested on December 5, 2014.

22. Plaintiff has no adequate remedy at law.

COUNT TWO

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

23. Plaintiff reaffirms paragraphs 1 - 19 as though fully restated herein.

24. Defendant improperly denied the FOIA request by their failure properly respond to the December 5, 2014 FOIA request in accordance with 5 ILCS 140/3 and 5 ILCS140/9.

25. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays this Court:

A. In accordance with FOIA Section 11(f), afford this case precedence on the Court's Docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;

B. Declare that DEFENDANT, Clark County Park District, has violated FOIA;

C. Order DEFENDANT to produce the requested records to Plaintiff under FOIA;

D. Enjoin the DEFENDANT from withholding non-exempt public records under FOIA;

E. Order DEFENDANT to properly respond to FOIA requests within the required deadline;

F. Declare DEFENDANT acted willfully, intentionally, and in bad faith in their failure to respond to, and to provide responsive documents to, Plaintiff's FOIA request;

G. Order DEFENDANT to pay a civil penalty of between \$2,500 and \$5,000 for each willful and intentional failure to comply with FOIA and any other act of bad faith in responding to the request;

H. Award PLAINTIFF reasonable fees, including attorney fees should Plaintiff retain the services of an attorney, and all costs/fees incurred in litigating this suit as the Court finds just and equitable.

I. Award such other relief the Court considers appropriate.

Dated: December 22, 2014

Respectfully submitted,

Signed and sworn before me
This ____ day of December, 2014

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

Exhibit A

From: John Kraft
Sent: Friday, December 05, 2014 9:31 AM
To: charitymurphy@ccparkdistrict.com
Subject: FOIA Request (CCPD) - 12-5-2014

In accordance with the Illinois Freedom of Information Act, provide the following:

1. Copy of the current insurance policy with PDRMA.
2. Copy of any payments made to PDRMA, to include those for insurance, membership, etc, since January 1, 2013.

This is not a commercial request.

Electronic copies requested.

Thanks,

John Kraft

217-808-2527

Exhibit B

From: charitymurphy@ccparkdistrict.com <charitymurphy@ccparkdistrict.com>
Sent: Friday, December 12, 2014 3:45 PM
To: John Kraft
Subject: RE: FOIA Request (CCPD) - 12-5-2014

Re: FOIA Request for Copies of the current insurance policy with PDRMA, and any payments made to PDRMA, to include those for insurance, membership, etc, since January 1, 2013.

Dear Mr. Kraft,

This correspondence constitutes the response of the Clark County Park District with respect to the records request you forwarded December 5, 2014, pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (FOIA).

In that request you asked for “Copies of the current insurance policy with PDRMA, and any payments made to PDRMA, to include those for insurance, membership, etc, since January 1, 2013”. Respectfully, the Park District is denying your request for that document based upon the below enumerated exemptions of the Illinois FOIA.

The Park District is a member of the Park District Risk Management Agency (PDRMA), a self-insured intergovernmental risk pool. PDRMA staff, including their General Counsel and Litigation attorneys, claims staff, and risk management staff, provide legal and risk management-related advice, consultation, information, and communications to the Clark County Park District and other PDRMA members.

As such, any and all communications between the Park District and PDRMA are exempt from disclosure under one or more of the following Illinois FOIA provisions:

1. The information you have requested includes documents which are exempt from disclosure under section 140/7(1)(s), which exempts:

“Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool. Insurance or self-insurance (including any intergovernmental risk management association or self-insurance pool) claims, loss or risk management information, records, data, advice or communications.”

2. The information requested also contains loss information and risk management information which is expressly prohibited from disclosure under 735 ILCS 5/2-1003(e) and 215 ILCS 5/143a.10a. Because section 140/7(a) of FOIA expressly exempts documents containing information prohibited from disclosure under state or federal law, the documents sought by you are not subject to disclosure.

3. The information you have requested includes documents which are exempt from disclosure under section 140/7(1)(m), which exempts:

(m) "Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies."

4. The information you have requested includes documents which are exempt from disclosure under section 140/7(t). This provision specifically exempts, among other things, insurance information.
5. The information you have requested would also include documents covered by section 140/7(n), as those documents include both communications between a public body and its attorney, as well as materials prepared or compiled by or for a public body related to employee grievances and discipline in anticipation of a civil or administrative proceeding.

As noted in the preamble to FOIA, the Act is intended to balance the interests of public access to public records, the privacy of individuals, and the efficient operation of public bodies. (5 ILCS 140/1.) The Park District has carefully weighed these competing interests in light of your FOIA request, and has determined that it is consistent with the Act, and in the public interest, to deny your request, which seeks privileged and confidential communications between the Park District and PDRMA, an Illinois intergovernmental risk management pool. In making this determination, the Park District has considered whether or not your request could be complied with while deleting portions of the requested document(s) and has determined that we could not do so.

You have a right to have the partial denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Phone: 217-558-0486

Fax: 217-782-1396

E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review of your denial by filing a lawsuit in the State circuit court. 5 ILCS 140/11.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC

Sincerely,

Charity Murphy

Charity Murphy

Executive Director

Clark County Park District

20482 N. Park Entrance Road

Marshall, IL 62441

Office: 217-889-3901

Cell: 217-822-3700

Fax: 217-889-3900

Charitymurphy@ccparkdistrict.com

www.ccparkdistrict.com

Exhibit C

From: John Kraft
Sent: Friday, December 12, 2014 4:21 PM
To: charitymurphy@ccparkdistrict.com
Subject: Re: FOIA Request (CCPD) - 12-5-2014

Please read the beginning paragraph of Section 7 that you claimed these exemptions from:

(5 ILCS 140/7) (from Ch. 116, par. 207)

Sec. 7. Exemptions.

(1) When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. **The public body shall make the remaining information available for inspection and copying.** Subject to this requirement, the following shall be exempt from inspection and copying:

Exhibit D

From: John Kraft
Sent: Friday, December 12, 2014 5:35 PM
To: charitymurphy@ccparkdistrict.com
Cc: Kirk Allen
Subject: Re: FOIA Request (CCPD) - 12-5-2014

Mrs. Murphy,

I certainly hope the Park District is not paying an attorney for the horrible advice you have been given related to this FOIA request. If an attorney advised you on this, please fire them for incompetence.

Here is my response to your denial, and I hope you read this and them comply with my request:

- (s) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool. Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

Payments to and copies of insurance policies are not proprietary information, and nothing I requested were records related to “the operation” of PDRMA.

Please review this Attorney General Opinion:

www.foia.ilattorneygeneral.net/pdf/opinions/2011/11-004.pdf

- (m) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

I did not ask for “communications” with any attorneys, but I did ask for payments to PDRMA, and this does not apply to my request.

- (t) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law.

The Park District is not “a public body responsible for the regulation or supervision of financial institutions or insurance companies”

(n) Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.

I did not ask for any information related to employee grievances or disciplinary cases.

The entire Code of Civil Procedure is for court cases, and in particular, 735 ILCS 5/2-1003(e) pertains to discovery and depositions, and does not apply to FOIA and it has already been well-established that FOIA is not a “Discovery Process” and not subject to Court supervision.

<http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=073500050K2-1003>

Nothing in the Illinois Insurance Code [215 ILCS 5/143.10a] prohibits the release of information

<http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=1249&ChapterID=22>

Additionally, The Illinois Constitution and the FOIA specifically state that ALL records related to the receipt and use of public funds are public records subject to inspection and copying.

Please provide the requested records.

Thanks,

John Kraft

217-808-2527

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
CLARK COUNTY, ILLINOIS

JOHN KRAFT

v.

Clark County Park District

NO. 2014-MR-

SUMMONS

To the defendant: Clark County Park District (Executive Director, ATTN: Charity Murphy)
20482 N. Park Entrance Road, Marshall, Illinois 62441

YOU ARE SUMMONED and required to file an answer in this case, or otherwise file your appearance,
in the office of the clerk of this court Clark County Courthouse, 501 Archer Avenue, Marshall, Illinois 62441,
(Insert name of building, room number, address, including city)

Illinois, within 30 days after service of this summons, not counting the day of service. IF YOU FAIL TO DO SO, A JUDGMENT OR DECREE BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT.

To the officer:

This summons must be returned by the officer or other persons to whom it was given for service, with indorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed. This summons may not be served later than 30 days after its date.

WITNESS _____, 20 ____.

(Seal of court)

Clerk of court

Associate Circuit Clerk-Deputy

Name John Kraft
Attorney for pro se
Address 7060 Illinois Highway 1
City Paris, Illinois 61944
Telephone 217-808-2527

Date of service: _____, 20 ____.
(To be inserted by officer on copy left with defendant or other person)

SHERIFF'S FEES

Service and return \$ _____
Miles _____
Total \$ _____

Sheriff of _____ County

I certify that I served this summons on defendants as follows:

(a) – (Individual defendants—personal):

By leaving a copy and a copy of the complaint with each individual defendant personally, as follows:

Name of defendant	Date of service
_____	_____
_____	_____
_____	_____

(b) – (Individual defendants—abode):

By leaving a copy and a copy of the complaint at the usual place of abode of each individual defendant with a person of the family, or a person residing there, of the age of 13 years or upwards, informing that person of the contents of the summons, and also by sending a copy of the summons and of the complaint in a sealed envelope with postage fully prepaid addressed to each individual defendant at his or her usual place of abode, as follows:

Name of defendant	Person with whom left	Date of service	Date of mailing
_____	_____	_____	_____
_____	_____	_____	_____

(c) – (Corporation defendants):

By leaving a copy and a copy of the complaint with the registered agent, officer or agent of each defendant corporation, as follows:

Defendant corporation	Registered agent, officer or agent	Date of service
_____	_____	_____
_____	_____	_____

(d) – (Other service):

_____, Sheriff of _____ County

By _____, Deputy