

IN THE CIRCUIT COURT
FOR THE FIFTH JUDICIAL CIRCUIT
EDGAR COUNTY, PARIS, ILLINOIS

FILED

MAY 17 2016

Sandra K. Willett
Circuit Clerk, 5th Judicial Circuit Edgar County

Kirk Allen)
)
Plaintiff)
)
vs)
)
Illinois State Auditor General)
)
)
and)
)
Frank J. Mautino operating in his)
Official capacity as Auditor General)
)
)
Defendants)
)

Case No: MR-16-28

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

NOW COMES THE PLAINTIFF, Mr. Kirk Allen, 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 states as follows.

1. Plaintiff – Kirk Allen, is an Illinois resident, and resides in the County of Edgar.
2. Defendants are the Illinois State Auditor General, a public body as that term is defined by 5 ILCS 140/2(a), and Frank J. Mautino, in his official capacity as the Auditor General.
3. This court has jurisdiction as outlined in the Illinois Freedom of Information Act - 5 ILCS 140/11(b)

4. On February 9th, 2016, Plaintiff served a FOIA request on Defendant office of Auditor General, seeking copies of public records that included, among others:

1. *Copy of any communication either electronic or paper received by the Office of Auditor General and Frank Mautino seeking a response or answers to questions about Frank Mautino's campaign records, by any person, group of people, and/or any legislatures, either individually or as a group in the last 30 days.*
2. *Copy of any response provided by Frank Mautino to the above referenced requests.*

A true and correct copy of the request is attached hereto and incorporated herein as Exhibit A.

5. On February 10th, 2016, Defendant responded by e-mail informing Plaintiff that the response had been mailed because the files were too large to send via the internet.

A true and correct copy of the Defendant's communication is attached hereto and incorporated herein as Exhibit B.

6. On February 12th, 2016, Plaintiff received by US Mail, a FOIA response letter and two computer disks that contained the response mailed from the Defendant. The computer disks contained over 5,500 pages of records of which many had nothing to do with the requested records. A true and correct copy of all the provided records is attached on two computer disks herein as Exhibit C1 and C2. In addition, a true and accurate record is provided in 4 binders marked Exhibit D - 1 of 4, 2 of 4, 3 of 4, and 4 of 4. These same documents can be downloaded from the following link

https://www.dropbox.com/sh/r9s6gjb1zsvqce9/AAACBnAm1E_RNCFfwoRBiJnna?dl=0

The FOIA response letter from the Defendant dated February 10, 2016, is attached hereto and incorporated as Exhibit E.

7. A review of the records provided in the February 9th, 2016, FOIA request contain approximately 60 e-mail documents that appear to have been redacted of any content as only the header information is available, (See Exhibit D). The Defendant has provided no exemption for redactions of the content of these emails.

8. On February 14th, 2016, Plaintiff served a second FOIA request on Defendants office seeking copies of public records that included, among others:

1. *Copy of any communication either electronic or paper received by the Office of Auditor General and Frank Mautino seeking a response or answers to questions about Frank Mautino's campaign records, by any person, group of people, and/or any legislatures, either individually or as a group **between February 10th, 2016 and February 15th, 2016, beginning and ending date inclusive.***
2. *Copy of any response provided by Frank Mautino to the above referenced requests.*

A true and correct copy of the FOIA request is hereto and incorporated herein as Exhibit F.

9. On February 18th, 2016, Plaintiff received by e-mail the response to Plaintiffs February 14, 2016 FOIA request that contained 10 Attached documents.

A true and correct copy of the e-mail and all provided records is attached hereto and incorporated herein as Exhibit G.

10. A review of the records provided by Defendant to the February 9th and 14th, 2016 FOIA requests (Exhibit C and Exhibit G) to Plaintiffs FOIA requests do not contain certain records that are subject to the Plaintiff's FOIA request. Incorporated herein as Exhibit H is an Affidavit from John Kraft who received certain records in his FOIA request to the Defendant labeled as page numbers in Exhibit H. The documents Kraft received, specifically pages 6-8 of Exhibit H, are clearly applicable to Plaintiffs FOIA request and were not provided to Plaintiff. Specifically, the records Kraft received were in fact communications from a State Representative and the Defendants response to those communications and dealt with Defendant Frank Mautino's campaign expenditures, which are clearly records subject to Plaintiffs FOIA request which stated:

1. *Copy of any communication either electronic or paper received by the Office of Auditor General and Frank Mautino seeking a response or answers to questions about Frank Mautino's campaign records, by any person, group of people, and/or any legislatures, either individually or as a group between February 10th, 2016 and February 15th, 2016, beginning and ending date inclusive.*
2. *Copy of any response provided by Frank Mautino to the above referenced requests.*

11. Section 2(c) of the FOIA [5 ILCS 140/2(c)] defines "Public records" as: *"Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.*

12. Section 11(a) of the 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.*”

13. 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 cases 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.*)

14. Plaintiff reaffirms paragraphs 1-13 as though fully restated herein.

15. Plaintiff is being denied his legal right to inspect public records by Defendants failure to produce the records requested on February 9th and 14th, 2016. See Exhibit A & F.

16. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays this Court:

A. Declare Defendants to be in violation of the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*; and

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

C. Enjoin the Defendants 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; and

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

E. Declare Defendants acted willfully, intentionally, and in bad faith in failing to properly deny and in failing to provide responsive documents to Plaintiff's FOIA requests; and

F. Order Defendants 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, and all costs/fees incurred in filing this suit as the Court finds just and equitable.

COUNT TWO

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

17. Plaintiff reaffirms paragraphs 1-13 as though fully restated herein.

18. Defendant improperly denied the request in Count One of this Complaint by their failure to follow 5 ILCS 140/3 and 5 ILCS140/9 and 5 ILCS 140/9(a)

19. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays this Court:

A. Declare Defendants to be in violation of the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*; and

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

C. Enjoin the Defendants 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; and

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

E. Declare Defendants acted willfully, intentionally, and in bad faith in failing to properly deny and in failing to provide responsive documents to Plaintiff's FOIA requests; and

F. Order Defendants 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, and all costs/fees incurred in filing this suit as the Court finds just and equitable.

Dated: May 17, 2016

Respectfully submitted,



Kirk Allen, *pro se*
3894 Coach Road
Kansas, IL 61933
Tel: (217) 508-0564
Plaintiff

Signed and sworn before me
This 17th day of May, 2016


~~Notary Public~~ *n*