

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS**

JOHN KRAFT,)
)
 Plaintiff,)
) 17 MR 25
 v.)
)
 CITY OF CARLINVILLE,)
)
 Defendant.)

PLAINTIFF'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

On July 10, 2018 this Court granted Kraft's first motion for partial summary judgment and ordered Carlinville to produce the responsive records. Carlinville ultimately produced some, but not all of the responsive records. Kraft moves for summary judgment, in response to which Carlinville is required to prove beyond material doubt that it conducted an adequate search for records. Kraft disputes that Carlinville will be able to do so. This Court should grant Plaintiff's second motion for partial summary judgment, order Carlinville to perform an adequate search for records, and grant Plaintiff leave to take discovery to ensure that the search is adequate.

I. UNDISPUTED FACTS

On July 10, 2018, Plaintiff's first motion for partial summary judgment was argued and granted. Ex. A (July 10 Order). The Court ordered Carlinville to produce records by July 13, 2018 at 4:30 pm. *Id.* On July 14, 2018 Carlinville produced some responsive records. Carlinville failed to produce recordings of the electoral board meetings and agendas, minutes, and notices for the meetings in Mr. Bertinetti's private office and the closed session meeting

prior to the open meeting – both on December 28, 2016.¹

II. LEGAL STANDARDS

A. Adequacy Of The Search

Critically, a public body bears the “burden of showing that its search was adequate.” *BlueStar Energy Servs., Inc. v. Illinois Commerce Comm’n*, 374 Ill. App. 3d 990, 996-97 (2007). To meet that burden, the public body “must show beyond material doubt that it has conducted a search reasonably calculated to uncover all relevant documents.” *Morley v. CIA*, 508 F.3d 1108, 1114 (D.C. Cir. 2007); *see also, e.g., Lee v. U.S. Attorney for So. Dist. of Fla.*, 289 F. App’x 377, 380 (11th Cir. 2008). A public body “must set forth sufficient information in its affidavits for a court to determine if the search was adequate.” *Nation Magazine, Washington Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995). Affidavits must be reasonably detailed, “setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched.” *Id.* “Conclusory statements that the agency has reviewed relevant files are insufficient to support summary judgment.” *Id.*

The search must include all places where responsive records “might reasonably be found.” *Miller v. United States*, 779 F.2d 1378, 1383 (8th Cir. 1985). The public body “cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Oglesby v. U.S. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). If there is substantial doubt about the adequacy of the search, the public body has not satisfied its obligations. *See, e.g., Iturralde v. Comptroller of Currency*, 315 F.3d 311, 314 (D.C. Cir. 2003). Discovery is appropriate when a public body “has not taken adequate steps to uncover responsive

¹ Plaintiff reached out to opposing counsel multiple times and attempted to resolve these issues short of motion practice. Defendant has refused to produce any affidavits about its search absent the filing of this motion.

documents.” *Schrecker v. Dept. of Justice*, 217 F. Supp. 2d 29, 35 (D.D.C. 2002); *see also SafeCard v. SEC*, 926 F.2d 1197, 1202 (D.C. Cir. 1991).

B. Summary Judgment

In response to a summary judgment motion, the party bearing the burden of proof (here, Carlinville), must come forward with supporting evidence and may not rest on mere argument or its own pleadings. *Harrison v. Hardin Cty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). The burden of proof and level of detail required under FOIA are exacting, and Carlinville must come forward with that proof now.

III. ARGUMENT

It is undisputed that Carlinville is a public body and that Carlinville did not produce all of the requested records as the Court ordered. As discussed above, Carlinville must prove beyond material doubt that it conducted an adequate search for records. Kraft will address Carlinville’s evidence and arguments once they are provided in response to this motion.

IV. CONCLUSION

This Court should grant Plaintiff’s second motion for partial summary judgment, order Carlinville to perform an adequate search for records, and grant Plaintiff leave to take discovery to ensure that the search is adequate.

RESPECTFULLY SUBMITTED,

/s/ Joshua Hart Burday

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In The Circuit Court
For The Seventh Judicial Circuit of Illinois
Sangamon County, Springfield, Illinois

FILED

JUL 10 2018

Joe Rose
Clerk of the Circuit Court
Macoupin County, Illinois

John Kueft

(Petitioner)

vs.

City of Carthage

(Defendant)



Case No. 17 MR 25

ORDER

Plaintiff's motion for partial summary judgment
argued, and granted Defendant to produce records
by 7/13/18 @ 4:30

7/10/18
Date

[Signature]
Judge