



2. Rachael Lawrence is not a law enforcement officer, a prosecutor or even a journalist. The disclosure of the Dropbox Account was not compelled in any way. It was a totally voluntary disclosure and, as such, constituted a voluntary waiver of the reporter's privilege.

3. The contents of the Plaintiff's Dropbox Account have been divulged, and as such, are now in the public domain. The Plaintiffs are suing Defendants for failure to respond to FOIA requests at the same time they are denying access to the documents that would be used to answer the requests. "A waiver of the reporter's privilege has most often been found where the plaintiff put the sought-after information into issue in the litigation and then attempted to prevent its disclosure by invoking the shield of privilege." *Ayala v. Ayers*, 668 F. Supp2d 1248,1250 (S.D. Cal. 2009)

4. Whether or not the Plaintiffs meet the statutory definition of a reporter and a media outlet is irrelevant; even if the Reporter's Privilege exists in this case it was waived by the disclosure of the contents of the Dropbox Account to Rachael Lawrence.

5. The Plaintiffs are propounding a limited concept of relevance to narrow the scope of what they have to produce. "A fact is relevant if it tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *People v. Pawlaczyk*, 724 N.E. 2d 901, 908 (Ill. 2000). The contents of the Plaintiffs' Dropbox Account are directly relevant to the Affirmative Defenses posited by the Defendants.

6. The public interest supported by disclosure of the contents of the Plaintiff's Dropbox Account is the Defendant's interest in the preservation of its own property. Many of the documents contained in the Account belong to the Defendants and are necessary to adequately defend against the Plaintiffs' complaint for FOIA violations.

7. Additionally, many documents were unable to be located by Defendants after an extensive and thorough search of the Township offices, specifically the video recording subject to Count I of Plaintiff's Complaint. The Defendants have exhausted all other available sources of information. The failure to locate these documents leads to the conclusion that they may, in fact, have been removed by an unauthorized person without authority and provided to the Plaintiffs.

8. In their prayer for relief the Plaintiffs are requesting that this Court enter a finding that Allen and Kraft meet the statutory definition of reporters and media. This is not a declaratory judgment action. The Plaintiffs are asking this Court to lend credibility to a politically motivated scandal sheet.

9. They are also asking that this Court quash any future subpoenas directed to the Dropbox Account which is the subject of this action. This is in spite of the fact that this Court indicated at a prior hearing that it could not and would not take action against subpoenas that do not even exist.

10. These requests are blatantly improper and should be denied.

WHEREFORE, Defendant, Algonquin Township requests that this Honorable Court enter an Order:

- a. Denying the Plaintiffs Motion to Quash Subpoena;
- b. Denying that Plaintiffs Allen and Kraft meet the statutory definition of reporters and media;
- c. Denying the Plaintiffs' motion to quash any future subpoenas directed to the Dropbox Account at the URL identified in Defendant's subpoena;
- d. Denying that Plaintiffs enjoy the reporter's privilege;
- e. Denying the Plaintiffs request for costs and attorneys fees;

- f. Ordering that the Plaintiffs submit the contents of the Dropbox Account to the Court for an In Camera examination to determine whether the reporter's privilege applies;
- g. And for such other and further relief as this Court deems just.

Respectfully Submitted

By: Gerald P. Lenzen  
Attorney for Defendant  
Algonquin Township

**VERIFICATION**

Under penalties of perjury as provided by law pursuant to Section 1-109 of the code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matter therein stated to be on information and belief and, as to such matter, the undersigned certifies as aforesaid that he verily believe the same to be true.

Gerald P. Lenzen  
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STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF McHENRY )

**AFFIDAVIT OF RACHAEL LAWRENCE**

I, Rachael Lawrence state on oath and under penalty of perjury that the following is true and correct:

1. I, Rachael Lawrence live in unincorporated Algonquin Township, Illinois and am a duly elected officer of Algonquin Township Board.
2. I have been in contact with the Edgar County Watchdogs since about April of 2018.
3. I spoke with Kirk Allen on numerous times, he e-mailed me, as well as would text me about Algonquin Township.
4. Andrew Gasser gave me the URL to the dropbox and Kirk Allen and the Edgar County Watchdogs gave me access a dropbox, which I deposited documents in and could review documents about Algonquin Township.
5. Kirk Allen asked me to deposit documents in the dropbox.
6. I have continually had access to this dropbox.

Affiant Sayeth Further Naught.

*Rachael Lawrence*

\_\_\_\_\_  
Rachael Lawrence

Subscribed and Sworn to  
before me this 28<sup>th</sup> day of  
December, 2018.

*Mary Ann Selvey*  
\_\_\_\_\_  
Notary Public

