

**IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS**

KIRK ALLEN, JOHN KRAFT, AND EDGAR) COUNTY WATCHDOGS INC.)))	
PLAINTIFFS,))	18 CH 000238
V.))	
ALGONQUIN TOWNSHIP AND ALGONQUIN) TOWNSHIP ROAD DISTRICT.)))	
DEFENDANTS.))	

PLAINTIFF’S REPLY TO MOTION TO QUASH SUBPOENA

Now Comes Kirk Allen, John Kraft, and Edgar County Watchdogs Inc. (hereafter “Plaintiffs”), by and through their attorney Denise M. Ambroziak, and in support of their Motion To Quash Defendant’s Subpoena And Any Future Subpoenas To The Dropbox URL Identified Herein, reply to the Defendant’s Response as follows:

1. Defendant purports that Kirk Allen is the only Plaintiff to claim reporters’ privilege. However, all Plaintiffs in this matter assert reporter’s privilege over the following:
 - a. The Dropbox folder that is the subject of this subpoena, each and every file contained within the subject Dropbox account, the identifying information for each and every person with access to this Dropbox, all files transferred into and out of this Dropbox, and the name of the owner of this folder including all identifying information pertaining to payments to Dropbox.
2. Defendant falsely claims that Edgar County Watchdogs Inc. (hereafter “ECW”) voluntarily gave access to the Plaintiffs’ Dropbox Account, waiving the reporter’s privilege. As it relates to Rachel Lawrence (hereafter “Lawrence”), the file folder access was not the same as Andrew Gasser’s (Hereafter “Gasser”) access and at the request of

Lawrence, she requested anonymity. Neither named individuals ever had access to the entirety of Plaintiffs' Dropbox account.

3. Lawrence's assertion that contact with Plaintiffs began on April 2018 is not factual, as evidenced by her email of November 2017 to Plaintiffs. See Exhibit A.
4. Lawrence claims to have received a URL link to a Dropbox file folder from Gasser. Plaintiffs had no knowledge this was being provided to her, such access was not with any permission from Plaintiffs. Lawrence falsely claims that ECW gave her access to its Dropbox. Kirk Allen, not ECW, provided her a link to a Dropbox file folder for a separate matter that was not the same link as that provided to Gasser. See Exhibit B. It appears the Defendant and Lawrence are attempting a misrepresentation on the Court by giving the impression these two separate links for file folders are the same.
5. The URL link provided to Lawrence was for the purpose of her being able to upload documents that she claimed supported evidence of a crime. This link only provided her with an ability to upload records specific to the issue she was assisting Plaintiffs to investigate.
6. Plaintiff Kirk Allen does not recall asking Lawrence to deposit documents in Dropbox. Kirk Allen provided a link to a specific Dropbox file folder and told her if she has evidence to support the allegations she was making, she could upload them in the specific file folder provided, which was not the same as the folder provided to Gasser. The purpose of providing separate file folders for key investigations is to protect sources, which, as in this case, Lawrence wanted to remain anonymous.
7. Plaintiffs did not share the URL link information of each folder to each person. Each person had their own designated folder created for them. Moreover, these separate folders

did not provide access into the entirety of Plaintiffs' Dropbox account. The fact that sources provided their URL link to another does not divest the privilege that applies to the Plaintiffs.

8. By analogy, a reporter does not waive any privilege by inviting a source to come to his office in order to deposit documents into the reporter's file.
9. While the Defendant speak of voluntary disclosure, Plaintiffs have not voluntarily disclosed any privileged information and as such, have not waived any privilege. Plaintiffs simply provided a person who requested anonymity a place to upload files that she asserted would prove a crime had occurred for a separate investigation. That does not rise to the level of waiving reporter's privilege.
10. Defendant points to *Ayala v. Ayers* in support to their position, however, that case is factually distinct from the instant litigation. *Ayala v. Ayers*, 668 F. Supp. 2d 1248 (S.D. Cal. 2009). Unlike in *Ayala*, where the court found that an author impliedly waived the journalist's privilege by producing his manuscript to one side's counsel, Plaintiffs at no time produced anything to Gasser or Lawrence as is being implied by Defendants. *Id.* at 1250. The fact that Lawrence gained access to a file folder, of which Plaintiffs never provided her a URL link, does not default to a position where the Plaintiffs produced anything to Lawrence. As outlined in Defendant's Response Exhibit A, Lawrence gained access to a file folder because Gasser shared that information, not the Plaintiffs. Plaintiffs have not released privileged information to anyone. Plaintiffs provided a location where whistleblowers could place information and maintain anonymity.
11. Defendant states that "Plaintiffs are propounding a limited concept of relevance to narrow the scope of what they have to produce." However, it appears the Defendants

misunderstand the Illinois Freedom of Information Act (Hereafter "FOIA"). The Algonquin Township is a public body as defined by FOIA. 5 ILCS 140/2. FOIA places the burden of production of records on the public body, not the requestor of information. 5 ILCS 140/1.2. Here, the burden to produce public records is placed on the Defendant, not the Plaintiffs. While the Defendant speaks of contents of the Plaintiffs' Dropbox, it is clear that Defendant is seeking far more than just content. Defendant appears to be seeking sources, which have nothing to do with Defendants' obligation to produce public records. Sources are also protected under the reporter's privilege. 735 ILCS 5/8-901. By defining "source" to include a "means," the legislature clearly intended the reporter's privilege to protect more than simply the names and identities of witnesses, informants, and other persons providing news to a reporter. *People v. Slover*, 753 N.E.2d 554, 557-58 (4th Dist. 2001).

12. Defendant's Answer to Plaintiff's complaint makes no mention of any affirmative defenses connected to Plaintiffs Dropbox account. Plaintiffs' Dropbox account, content and access is not relevant. Regardless of the information that might be contained in such a folder, Defendant is seeking far more than just the contents of the folder, but rather key information that may divulge sources of Plaintiffs that are clearly protected under 735 ILCS 5/8-901:

No court may compel any person to disclose the source of any information obtained by a reporter except as provided in Part 9 of Article VIII of this Act [735 ILCS 5/8-901 et seq.].

13. Defendant's assertion that information in Plaintiffs possession is somehow relevant to an affirmative defense is misplaced. This litigation is a FOIA matter. A request for records was provided within the guidelines of the law and the public body is obligated to respond accordingly. If Defendants claim that a requested record is exempt from public disclosure

then the burden is on the Defendant to provide a detailed justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing. *Bluestar Energy Services v. Illinois Commerce Comm'n*, 871 N.E.2d 880, 886 (1st Dist. 2007). Even if the Plaintiff had obtained every record requested from another source, possession of such a record is not grounds for the Defendant to divest a reporter of their privilege regarding their possession of such records.

14. Defendant's Answer to Plaintiff's Count 1 asserted the public record (the video), was prohibited from disclosure, not that they were unable to locate such a record. To now assert that such a video could not be located conflicts with the original position that the video was prohibited from disclosure.

a. Defendants' Answer to Count 1, item 11

b. "Defendants admits the allegation in Paragraph 11 that the information sought was exempt from disclosure pursuant to 5 ILCS 140 /7(1)(a) and 5 ILCS 14017 (1)(c)." **Verify that this is exactly what the answer says**

15. Key elements to a reporter's privilege are the fact that they meet the criteria outlined in 735 ILCS 5/8-902 (Definitions). While the Defendant may wish to cast unfounded aspersions at the Plaintiffs and their work, the fact remains they are reporters and their organization, Edgar County Watchdogs, Inc., is in fact a news medium. All Plaintiffs have sources they wish to protect.

16. It appears the Defendant is now asserting they cannot properly answer Plaintiffs' FOIA requests without first seeing what the Plaintiffs have in their possession, obtained through multiple sources of which anonymity was requested and honored. The purpose of FOIA

is to ensure the records being reported on are in fact actual public records. While Plaintiffs may have a record that appears to be a public record from a public body, the only way to authenticate that it is, in fact, a public record is to obtain a copy directly from the public body, as is common practice with a FOIA request.

DATED this 8th day of April, 2019.

Respectfully submitted,
Kirk Allen
John Kraft
Edgar County Watchdogs Inc.

By: /S/Denise M. Ambroziak
Denise M. Ambroziak
one of their Attorneys

STATE OF ILLINOIS }
 }
 } SS
COUNTY OF MCHENRY }

I, Denise M. Ambroziak, being an attorney for the Plaintiffs certify that the positive statements are true and correct, and I believe the matters stated on information and belief are also true.

/S/Denise M. Ambroziak
Denise M. Ambroziak

Denise M. Ambroziak
ARDC #6244325
AMBROZIAK & ASSOCIATES
Attorney for Plaintiffs
550 West Woodstock St. Ste 107
Crystal Lake, IL 60014
(815) 459-4949
ambroziaklaw@comcast.net

From: Rachael Lawrence [<mailto:mamalawrence@hotmail.com>]

Sent: Tuesday, November 28, 2017 9:00 AM

To: Kirk Allen <Kirk@illinoisleaks.com>

Subject: Fwd: RE: Amended Budget

Dear Mr. Allen,

I applaud the work you are doing in exposing malfeasance within local governments, especially Algonquin Township. In fact, the blatant nepotism in my township was the main reason I ran and was elected Trustee earlier this year. What I thought was merely unethical practices has quickly become what appears to be serious illegal activity. More on that if and when we talk in person or via phone.

Please consider me a resource when it comes to seeking information about what's going on behind the scenes at Algonquin Township. There are some public records that I can share, but also some things I'd prefer to remain anonymous as well. Feel free to contact me on my cell at (847)220-3333.

Meanwhile, here is the email chain in which Clerk Karen Lukasik fails to timely publish a public hearing notice and the township attorney's (Jim Kelly's) response in which he CC'd the board, plus Hwy Comm. Andrew Gasser: (my personal attorney has advised me that this email is not attorney-client privileged, because it includes the third party Andrew Gasser, who is represented by different legal counsel as well as Karen Lukasik who also has her own separate legal counsel.)

EXHIBIT A

From: Kirk Allen
Sent: Thursday, September 20, 2018 8:05 AM
To: Rachael Lawrence <mamalawrence@hotmail.com>
Subject: RE: FOIA REQUEST

Please upload to this account.

https://www.dropbox.com/sh/1g5nfru2jqlz1ps/AACL_mj8upgSeronEGXJfZ20a?dl=0

From: Rachael Lawrence [<mailto:mamalawrence@hotmail.com>]
Sent: Thursday, September 20, 2018 5:22 AM
To: Kirk Allen <Kirk@illinoisleaks.com>
Subject: Fwd: FOIA REQUEST

Fyi, the below FOIA was responded to, including all the files and court documents for each tax objection lawsuit. I have them on flash drive, but they are too large to email. Let me know how to get them to you.

EXHIBIT B