

**IN THE CIRCUIT COURT OF 22<sup>ND</sup> JUDICIAL CIRCUIT  
MCHENRY COUNTY, ILLINOIS**

Andrew Gasser,	)	
Plaintiff	)	
v.	)	
Karen Lukasik, Individually and in her	)	
Capacity as Algonquin Township Clerk;	)	
Anna May Miller; and Robert Miller	)	
Defendants,	)	Case No. 17 CH 435
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Karen Lukasik, Algonquin Township Clerk,	)	
Defendant/Third Party	)	
Plaintiff/Counter Plaintiff	)	
v.	)	
Charles Lutzow, in his Capacity as	)	
Supervisor of Algonquin Township	)	
Third Party Defendant and	)	
Andrew Gasser, in his capacity as Road	)	
Commissioner of Algonquin Township	)	
Counter Defendant	)	

**AMENDED COUNTER-CLAIM AND THIRD-PARTY COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

NOW COMES the Third-Party Plaintiff and Counter Plaintiff, Karen Lukasik, as Algonquin Township Clerk, by and through her attorneys Zukowski, Rogers, Flood & McArdle, and fully amended her Complaints previously filed herein on June 1, 2017 and July 5, 2017 by making the following complaint allegations against Third-Party Defendant, Charles Lutzow, as Supervisor of Algonquin Township, and Andrew Gasser, as Road Commissioner of Algonquin Township:

1. Third-Party Plaintiff, Karen Lukasik (“Lukasik”), resides in Algonquin Township, Illinois, and is the duly elected Clerk of Algonquin Township.
2. Third-Party Defendant, Charles Lutzow (“Lutzow”), is the duly elected Supervisor of Algonquin Township and is a resident of Illinois.

3. Counter Defendant, Andrew Gasser, is the duly elected Algonquin Township Road Commissioner.

### **Background**

#### **Missing RD-T Cabinet Files**

4. In preparation of assuming her role as Township Clerk, Lukasik shadowed the former Deputy Algonquin Township Clerk, Darlene Lutzow, on May 05, 2017. Her son, Jacob Lukasik, was with Lukasik due to a half day improvement day at school and he wanted to see her office. Her husband, Ron Lukasik, was on his lunch and near the Algonquin Township offices, so he stopped in to see her as well.

5. On May 05, 2017, Lukasik, along with Ron Lukasik, noticed that a filing cabinet with only two drawers marked "Road District" on one drawer and "Township" on the other drawer (hereinafter referred to as the "RD-T Cabinet") was filled with filed documents.

6. Lukasik, her husband, and her son did not look through or review any of the documents contained within the RD-T Cabinet.

7. On May 15, 2017, Lukasik was next present at the Algonquin Township offices solely for her swearing-in and took no notice of the RD-T Cabinet.

8. On May 15, 2017, and on each day thereafter until May 26, 2017, Lukasik was present at the Algonquin Township offices and took no notice of the RD-T Cabinet.

9. On June 1, 2017, Lukasik was present at the Algonquin Township office for a couple hours and noticed, for the first time, that the RD-T Cabinet was completely empty ("Missing Files").

10. Judy Kreklow, the former Township Supervisor's assistant, confirmed to Lukasik that the file drawers in the RD-T Cabinet were full of bills and were there on her last day of employment, May 12, 2017, and that there was no reason why those documents should be missing.

11. Lukasik confirmed Judy Kreklow's information with Anna May, former secretary for the past Highway Commissioner, Robert, that those files were stored there by Judy Kreklow and that she had the practice of keeping the end of the previous fiscal years' documents in that filing cabinet to be easily accessible for the Township auditors.

12. Lukasik informed Lutzow and Lutzow's employee, Ryan Provanzano, of the Missing Files and each denied knowledge of what happened to the Missing Files or where they could be found.

13. On Saturday, June 17, 2017, in the morning, Lukasik observed the Missing Files in file drawers located in the area occupied by Ryan Provenzano, Lutzow's employee. Lukasik immediately reported this fact to her attorney, the Township attorney, Jim Kelly and the McHenry County Sheriff.

14. At no time between June 1 and June 17 did Lutzow or any of his staff advise Lukasik that they were in possession of the Missing Files.

15. Upon information and belief, Lutzow, one of their agents, or some unknown party, removed these records from the RD-T Cabinet without the knowledge of Lukasik.

#### **Missing 2008-2010 Invoice Files**

16. In addition to the Missing Files in the RD-T Cabinet, Lukasik, after a diligent search of the Township Property that she has access to, has determined and observed that Town Fund and Road and Bridge invoices from 2008-2010 are missing from the Township office ("Missing 2008-2010 Files").

17. Lukasik spoke to Judy Kreklow, the former Township Supervisor's assistant, who confirmed that the file drawers in the RD-T Cabinet were full of bills and were there on her last day of employment May 12, 2017 and that there was no reason why those documents should be missing.

18. Lukasik confirmed Judy Kreklow's information with Anna May, former secretary for the past Highway Commissioner, Robert, that those files were stored there by Judy Kreklow and that she had the practice of keeping the end of the previous fiscal years' documents in that filing cabinet to be easily accessible for the auditors.

19. Upon information and belief, in or about 2013, the Township began scanning bills and other records on a stand-alone scanner in Lutzow's office. The scanned documents were subsequently stored on a server in Lutzow's office that Lukasik does not have access to.

#### **Records Found in the Trash**

20. On June 19, 2017, Lukasik discovered unsecured Township records in the trash.

21. Upon information and belief from a witness, Tim Shepherd, on May 12<sup>th</sup> and 13<sup>th</sup> 2017, Lutzow and his assistant Ryan Provenzano had borrowed a Cabota from the Highway Department and were loading banker boxes from the Township offices and dumping them into the dumpster. Shepherd was unsure of what type of items were within the boxes but saw binders, books and several unknown documents in the dumpster.

22. The records of Algonquin Township and the Algonquin Township Highway Department, accessible to Lukasik, but not solely within her custody, are located in four separate locations on Algonquin Township Property: Lukasik's office in the main township building, a downstairs storage room in the main township building, and two separate areas in building 6, hereinafter "the Storage Areas." On information and belief, other records of Algonquin Township

and the Algonquin Township Highway Department, not within Lukasik's custody, are located in the offices of Gasser and Lutzow.

23. On July 14, 2017, the Court entered a preliminary injunction order in this case as follows:

A Preliminary Injunction is hereby entered against Counter Defendants Gasser and Lutzow pursuant to 735 ILCS 5/11-102 prohibiting each of them and their employees from a) denying Lukasik full unfettered access to and custody of all records of Algonquin Township and the Algonquin Township Highway Department at all times for purposes of inventory, storage and security as required by law; and b) prohibiting Gasser and Lutzow from changing Township building access keys or codes to buildings/rooms where Township records are located without providing duplicate keys and code numbers to Lukasik immediately.

24. Subsequent to the entry of the above order, on or about September 2017, Lukasik installed key locks on the Storage Areas so as to keep control and custody of all of Algonquin Township and the Algonquin Township Highway Department records as per the Court's July 14, 2017, injunctive order.

**FOB System Installed**

25. On information and belief, in January 2018, Lutzow or one of his employees or agents removed the locks installed by Lukasik without her consent and replaced the locks with the FOB system that secures the Algonquin Township Property as a whole.

26. A FOB allows each FOB holder to access particular areas on the Algonquin Township Property.

27. Lukasik was given a FOB by Lutzow that allows access to the Storage Areas.

28. However, on information and belief, there are other Algonquin Township and Algonquin Township Highway Department elected officials and/or employees to whom Lutzow also gave FOBs that allow access to the Storage Areas.

29. On information and belief, Lutzow or his agent is in control of who receives a FOB that allows access to the Storage Areas.

30. On information and belief, Lutzow or his agent is in possession and control of the master program that controls the FOB system.

31. On information and belief, the master program keeps a record each time a particular FOB is used to enter a particular area, including the Storage Areas.

32. The person in possession of the master program, on information and belief Lutzow or his agent, is able to delete or change these records.

33. Since the FOB system was installed, records have both disappeared and appeared.

34. Shortly after the FOB system was installed, Lukasik observed that one of the boxes of Anna May Miller's time sheets were missing from building 6.

35. In April 2018, Lukasik noticed that the missing box containing Anna May Miller's time sheets had appeared in the downstairs storage area.

#### Gasser and Lutzow possession of Township Records

36. Gasser and Lutzow have offices for themselves and their staff in the Algonquin Township office building. These offices are locked by the FOB system over which Lukasik has no access when locked, without permission from Gasser or Lutzow.

37. On information and belief, the offices of Gasser and Lutzow contain numerous original records to which Lukasik does not have unfettered access and custody ("Restricted Records").

38. Lukasik made prior demands on Gasser and Lutzow regarding Township records in their possession, however, Township records continue to remain in possession of Gasser and Lutzow. Some of the Restricted Records, on information and belief, include the following: bank statements since May, 2017, FOIA requests and responses, other than one dated July 11, 2019 from Local 150, subpoena for documents, current vehicle titles, registration and insurance records,

video of Lukasik and Jen Curtiss, time sheets/cards (other than October 28, 2018-November 10, 2018) of various current and past employees and their personnel files, documentation regarding the MFT fund and non-dedicated road programs since Gasser was elected and certified payroll for vendors that have done business with the road district.

39. The current FOB system strips Lukasik of “*unfettered access to and custody of all records of Algonquin Township and the Algonquin Township Highway Department at all times for purposes of inventory, storage and security as required by law*” and is in contravention to the Court’s July 14, 2017 Preliminary Injunction Order.

40. While the FOB system may provide Lukasik with access to records in the Storage Areas, it does not provide her with exclusive custody of the records as she is left with no control of who accesses the Storage Areas and does not allow her to secure the records.

41. The Storage Areas needs to be secured with a physical key lock to which Lukasik controls the key, as was the case in January 2018, before the locks were removed without her consent.

#### **Legal Mandate**

42. On or about June 26, 2017, Lukasik received a legal mandate to produce certain Township Records that should be in her possession, pursuant to her statutory duties, and because of the restricted access to the records by Lutzow, she was prevented from fulfilling that mandate. Illinois law prohibits disclosure of the underlying document evidencing the referenced legal mandate.

#### **Inability to Respond to FOIA Requests**

43. Lukasik has received numerous requests to produce Township records pursuant to the Freedom of Information Act but cannot comply because she does not have full access to the Township Records.

44. Lutzow is prohibiting Lukasik from taking full and unfettered custody of the records of Algonquin Township and the Algonquin Township Highway Department.

**COUNT I – DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

45. Lukasik restates Paragraphs 1-44 as if fully set forth herein.

46. As the duly elected Clerk of Algonquin Township, Lukasik has legal tangible interest to protect in relation to all Algonquin Township documents including, but not limited to:

- a) Lukasik “*shall have the custody of all records, books, and papers of the township and shall duly file all certificates or oaths and other papers required by law to be filed in the clerk’s office.*” 60 ILCS 1/75-5;
- b) Lukasik, as the duly elected Algonquin Township Clerk, is the *ex-officio clerk* for the highway district. 605 ILCS 5/6-113.
- c) As the Clerk of the highway district, Lukasik shall “[*h*]ave the custody of all records, books, and papers of the road district, and [*s*]he shall duly file all certificates or oaths and other papers required by law to be filed in [*her*] office.” 605 ILCS 5/6-113 and 6-202.1.

47. Lutzow and Gasser are opposing Lukasik’s legal interest by denying her full, unfettered, access to and custody of all Algonquin Township records and by allowing others access to records without Lukasik’s oversight.

48. An actual controversy exists between Lukasik, Lutzow and Gasser as despite Lukasik’s demands, despite a preliminary injunction, and despite changing locks by Lukasik to maintain access and accountability of all Algonquin Township records, Lutzow and Gasser refuse Lukasik full unfettered access and custody to all records at times and upon information and belief, Lutzow, or one of his agents removed Lukasik’s locks and replaced them with a FOB system.

49. All of the records of Algonquin Township and the Algonquin Township Highway Department must be secured in the custody of Lukasik to avoid potential destruction, alteration, tampering or loss.



50. Because she is being denied full unfettered access to all Township Records and others have had and continue to have access to said records through a FOB system, Lukasik has no adequate remedy at law to preserve the records without the intervention of the court.

51. If all Township records are not inventoried and secured by Lukasik, they could be altered, tampered with, lost or destroyed, causing Lukasik and the public to suffer irreparable harm, as it will be impossible to identify who took the records and what, if any, records may have been copied before records were removed.

52. An injunction should be granted in favor of Lukasik, requiring Lutzow and Gasser to provide her with full, unfettered access to all Storage Areas, custody of all records of the Township, including records in the offices of Gasser and Lutzow (for purposes of inventory and security) and replacement of all FOB systems with Lukasik controlled key locks.

53. The harm to the public by not entering an injunction preventing Lutzow and Gasser from allowing Lukasik full unfettered access to all Township records for purposes of inventory and security outweighs any harm or complaint Lutzow and Gasser may have by entry of such an order because the records they need will be available upon request to Lukasik.

54. No hardship would be caused to Lutzow and Gasser should they be enjoined from removing Lukasik's locks on the Storage Areas

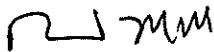
55. Lukasik has no adequate remedy at law to preserve the records without the intervention of the court.

56. For the reasons described herein, Lukasik would be likely to succeed on the merits of this complaint.

WHEREFORE, for the foregoing reasons Third-Party Plaintiff, Lukasik, respectfully requests that this Court grant Lukasik the following relief against Lutzow and Gasser:

- A. Determine and adjudicate the rights of the parties pursuant to 735 ILCS 5/2-701 as described herein.
- B. Issue a Permanent Injunction pursuant to 735 ILCS 735 ILCS 5/2-701 and 5/11-102 prohibiting Third-Party Defendant Lutzow and Counter Defendant Gasser and their employees and agents, from denying Lukasik complete access, custody and control over Algonquin Township records, allowing access to others through a FOB system, and removing Lukasik's locks on the Storage Areas.
- C. Any other relief that this court finds just and/or equitable.

KAREN LUKASIK  
By Zukowski, Rogers, Flood & McArdle

By  \_\_\_\_\_  
One of her attorneys

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