

**IN THE CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT
IROQUOIS COUNTY, ILLINOIS**

KIRK ALLEN,)	
EDGAR COUNTY WATCHDOGS,)	
)	2020CH20
Plaintiffs,)	
)	
v.)	
)	
VILLAGE OF ONARGA,)	
)	
Defendant.)	

COMPLAINT

NOW COME Plaintiffs, KIRK ALLEN and EDGAR COUNTY WATCHDOGS, by the undersigned attorneys, LOEVY & LOEVY, and bring this suit to overturn VILLAGE OF ONARGA's failure, in willful violation of the Illinois Freedom of Information Act, to comply with Plaintiffs' Freedom of Information Act request for all communications from the Onarga Police Chief and Onarga Police officers to members of the Village Board, Clerk, and Mayor between September 2019 and December 2019. In support of its Complaint, Plaintiffs state as follows:

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act ("FOIA"). 5 ILCS 140/1.

2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of

information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of the people. 5 ILCS 140/1.

3. Under FOIA Section 1.2, “[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.” 5 ILCS 140/1.2.

PARTIES

4. Plaintiffs KIRK ALLEN and EDGAR COUNTY WATCHDOGS are members of the media and made the FOIA requests in this case.

5. Defendant VILLAGE OF ONARGA (“ONARGA”) is a public body and located in Iroquois County, IL.

DECEMBER 22, 2019, FOIA REQUEST

6. On December 22, 2019, Plaintiffs submitted a FOIA request to ONARGA for a “copy of all communications from the Onarga Police Chief and Onarga Police officers directed to members of the Village Board, Clerk, and Mayor in the last 90 days. This would include text messages, emails, letters, etc.” Exhibit A.

7. On January 9, 2020, having received no response within the statutory deadline, Plaintiffs asked ONARGA for a status update. Exhibit B.

8. ONARGA never responded to Plaintiffs’ FOIA request or the follow up correspondence.

9. On February 17, 2020, Plaintiffs, through their attorneys, asked for another status update. Exhibit C.

10. On February 24, 2020, ONARGA produced two pages of records that were largely unresponsive to the request. Exhibit D.

11. Plaintiffs asked for further clarification from ONARGA in hopes of resolving the matter without litigation, but ONARGA stated that it had produced all responsive records and that it “does not have to produce text messages.” Exhibit E.

12. Section 2(c) of FOIA defines “[p]ublic records” as:

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. (Emphasis added).

5 ILCS 140/2(c).

13. As of the date of this filing, ONARGA has not produced the requested records.

COUNT I – DECEMBER 22, 2019, FAILURE TO PRODUCE RECORDS

14. The above paragraphs are incorporated by reference.

15. ONARGA is a public body under FOIA.

16. The records sought in the FOIA request are non-exempt public records of ONARGA.

17. ONARGA has violated FOIA by failing to produce the requested records.

COUNT II – DECEMBER 22, 2019, FAILURE TO PERFORM AN ADEQUATE SEARCH

18. The above paragraphs are incorporated by reference.

19. ONARGA is a public body under FOIA.

20. ONARGA bears the burden of proving beyond material doubt that it performed an adequate search for responsive records.

21. ONARGA has failed to come forward with sufficient evidence to carry this burden.

22. ONARGA has violated FOIA by failing to adequately search for the responsive records.

COUNT III – DECEMBER 22, 2019, WILLFUL VIOLATION OF FOIA

23. The above paragraphs are incorporated by reference.

24. ONARGA is a public body under FOIA.

25. The records sought in the FOIA request are non-exempt public records of ONARGA.

26. ONARGA has willfully and intentionally or otherwise in bad faith violated FOIA.

WHEREFORE, Plaintiffs ask that the Court:

- i. declare that ONARGA has violated FOIA;
- ii. order ONARGA to produce the requested records;
- iii. enjoin ONARGA from withholding non-exempt public records under FOIA;
- iv. order ONARGA to pay civil penalties;
- v. award Plaintiffs reasonable attorneys' fees and costs; and
- vi. award such other relief the Court considers appropriate.

Dated: April 20, 2020

RESPECTFULLY SUBMITTED,

/s/ Joshua Hart Burday

Attorneys for Plaintiffs

KIRK ALLEN

EDGAR COUNTY WATCHDOGS

Matthew Topic,

Joshua Burday, ARDC #6320376

Merrick Wayne

LOEVY & LOEVY

311 North Aberdeen, 3rd Floor

Chicago, IL 60607

312-243-5900

foia@loevy.com

From: Kirk Allen
Sent: Sunday, December 22, 2019 1:19 PM
To: villageofonarga@sbcglobal.net
Subject: FOIA Request

In accordance with the Freedom of Information Act of Illinois, I am requesting the following public records.

1. A copy of all communications from the Onarga Police Chief and Onarga Police officers directed to members of the Village Board, Clerk, and Mayor in the last 90 days. This would include text messages, emails, letters etc.
- 2.
3. I qualify as both media and non-profit under the definitions in Section 2 (c-10) ("Commercial purpose"), Section 2 (f) ("News media"), Section 2 (g) ("Recurrent requester"), and Section 2 (h) ("Voluminous request") of the Freedom of Information Act, for the purposes of being exempt to the provisions of Section 3.1 (Requests or commercial purposes), Section 3.2 (Recurrent requesters), Section 3.6 (Voluminous requests), and Section 6 (Authority to charge fees).

I request expedited processing on the basis of an urgency to inform the citizens and taxpayers of Illinois about their government's activities. If any element of this request is denied in whole or in part, I ask that you justify all withholdings individually by reference to specific exemptions of the Act. Please provide all responsive information to me electronically.

I request a rolling production of records, such that the public body furnishes records to my attention as soon as they are identified, preferably electronically, but as needed then to my attention, at the below address. If you have any questions please do not hesitate to contact me. Rolling production is not to be perceived as an agreement to extend the time frame for compliance under FOIA.

If you are not the FOIA officer responsible for any part of this request you are required by law to forward it to the appropriate FOIA officer.

The purpose of the request is to access and disseminate information regarding the legal rights of the general public and is not for the principal purpose of personal or commercial benefit.

As outlined in FOIA, documents shall be furnished without charge or at a reduced charge, as determined by the public body, if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. Waiver or reduction of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit.

Exhibit A

I am requesting the records be provided in electronic format if that is the method in which they are stored. If they are in paper form and the copier can convert them to electronic format I would appreciate receiving them electronically.

Thanks,

Kirk Allen



FOIA Request .msg
118K

From: Kirk Allen
Sent: Thursday, January 9, 2020 11:00 AM
To: villageofonarga@sbcglobal.net
Subject: FOIA Request

Please let me know what your intentions are on this overdue FOIA.

Thanks

Kirk Allen

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I am requesting the records be provided in electronic format if that is the method in which they are stored. If they are in paper form and the copier can convert them to electronic format I would appreciate receiving them electronically.

Thanks,

Kirk Allen

Edgar County Watchdogs

Exhibit B

Kirk Allen FOIA request submitted 12/22/19

Josh Burday <joshb@loevy.com>
To: villageofonarga@sbcglobal.net
Cc: FOIA Team <foia@loevy.com>

Mon, Feb 17, 2020 at 5:03 PM

Dear Madam or Sir, my client Kirk Allen, submitted a FOIA request to you on 12/22/19. Part of the request language is copied below for convenience. Please provide a response to this request in the next 7 days.

"A copy of all communications from the Onarga Police Chief and Onarga Police officers directed to members of the Village Board, Clerk, and Mayor in the last 90 days. This would include text messages, emails, letters etc."

--

Joshua Burday
Loevy & Loevy
311 N. Aberdeen, 3rd Floor
Chicago, Illinois 60607
joshb@loevy.com

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----- Forwarded message -----

From: **Stephanie VonDrehle** <svondrehle@federatedbank.com>

Date: Mon, Feb 24, 2020 at 12:01 PM

Subject: RE: FW: FOIA Request

To: Josh Burday <joshb@loevy.com>

Good Morning Josh,

Attached are the meeting minutes from the Safety, Security, & Enforcement Committee Meetings any other discussions can be found on the Village of Onarga website. If you have any questions, please do not hesitate to contact me.

Thank you,

Stephanie L. VonDrehle

BSA & Compliance Officer



[107 N. Chestnut](#), P.O. Box B | Onarga, IL. 60955

Phone (815)268-7676 Ext. 540 | Fax (815)268-7229

svondrehle@federatedbank.com

www.federatedbank.com

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----- Forwarded message -----

From: **Stephanie VonDrehle** <svondrehle@federatedbank.com>

Date: Thu, Mar 5, 2020 at 7:13 AM

Subject: RE: FW: FOIA Request

To: Josh Burday <joshb@loevy.com>

Good Morning Josh,

I apologize for not responding until now on this.

First, I am the FOIA Officer for Village of Onarga and in all the training I have completed it states that a person needs to be specific on what they are wanting when it comes to a FOIA request and I have asked you what exactly you are looking for and have only received general information.

Second, I was informed by Jim Devine, Iroquois County's States Attorney that the Village in fact does not have to produce text messages. With this item as well I have spoken with Doug Brenner our Chief of Police and if you would tell me what exactly you are wanting to know he might be able to help you however everything that has been discussed by the committee and board are in the meeting minutes I have sent you. I am not sure who you have spoken with that says they have texted about other items, but I believe they are incorrect. If you would like to tell me who this is, I would definitely find out from them what they referring to.

As for your doubts I am not exactly sure how to address this, however I have been on the Village Board for the last 5 years and the majority of my time is to lookout for the Village of Onarga's best interest, to assist with daily functions of the Village, and to help the Village President & Board when any tasks they ask me to do. As stated above I am the FOIA Officer and do not take any of these FOIA matters lightly.

Please let me know what I can do to settle this matter.

Thank you,

Stephanie L. VonDrehle

BSA & Compliance Officer

107 N. Chestnut, P.O. Box B | Onarga, IL. 60955

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Exhibit E

any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the email or attachments.