

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS**

EDGAR COUNTY WATCHDOGS, )  
KIRK ALLEN, )  
 )  
Plaintiffs, ) 20CH683  
 )  
v. )  
 )  
JOLIET TOWNSHIP, )  
 )  
Defendant. )

**COMPLAINT**

NOW COME Plaintiffs, EDGAR COUNTY WATCHDOGS and KIRK ALLEN by the undersigned attorneys, LOEVY & LOEVY, and bring this suit to overturn Defendant JOLIET TOWNSHIP's willful violation of the Illinois Freedom of Information Act. Plaintiffs requested records of the hard drive contents of a specific city-owned computer along with Destruction Certificates issued to JOLIET TOWNSHIP by the Secretary of State Local Records Commission from the past 12 months. JOLIET TOWNSHIP failed to comply with FOIA by refusing to produce the records and charging Plaintiffs with unauthorized fees to process the request. In support of the 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.

**Initial case management set for  
12/09/2020 at: 9:00 a.m.**

**ROOM: A236**

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 EDGAR COUNTY WATCHDOGS, and KIRK ALLEN are the FOIA requesters in this case. Plaintiffs are members of the media and a non-profit organization comprised of investigative reporters whose purpose is to foster accountability, truth, and transparency in our local governing bodies.

5. Defendant JOLIET TOWNSHIP is a public body located in Will County, Illinois.

### **JUNE 9, 2020, FOIA REQUEST**

6. On June 9, 2020, Plaintiffs submitted a FOIA request (the “Request”) to JOLIET TOWNSHIP for the following records:

- 1) A copy of the hard drive contents of the Dell XPS computer, serial number NJ81BU6. I am seeking only those records that are not exempt as outline under FOIA;
- 2) A copy of all records of Destruction Certificates issued by the Secretary of State Local Records Commission in the last 12 months; and
- 3) A copy of all request to the Secretary of State Local Records Commission for approval to destroy public records in the last 12 months.

Exhibit A.

7. On June 26, 2020, JOLIET TOWNSHIP sent Plaintiffs “the quote from the IT Company” without any explanation. The invoice was also addressed to JOLIET TOWNSHIP and not Plaintiffs. Exhibit B.

8. On July 3, 2020, Plaintiffs informed JOLIET TOWNSHIP that the earlier provided invoice is addressed to JOLIET TOWNSHIP and asked JOLIET TOWNSHIP to provide an appropriate invoice addressed to Plaintiffs. Exhibit B.

9. On July 9, and July 13, 2020, on two separate occasions, Plaintiffs asked for a status update of the Request and asked for the basis of these fees. Exhibit C.

10. On July 14, 2020, JOLIET TOWNSHIP provided an updated invoice addressed to Plaintiffs. JOLIET TOWNSHIP stated that “this is something that must be completed by our outside IT company.” Exhibit D.

11. The invoice shows a total amount of \$350: \$300 for “onsite visit to create vhd file of computer 3N781BU6 (2hrs at \$150/hr)” and \$50 for a 500GB external hard drive. Exhibit D.

12. On July 15, 2020, Plaintiffs asked JOLIET TOWNSHIP again for the statutory basis for charging the fees, but JOLIET TOWNSHIP never responded.

13. Section 6(a) of FOIA states, in relevant part:

When a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester. ***A public body may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium. If a request is not a request for a commercial purpose or a voluminous request, a public body may not charge the requester for the costs of any search for and review of the records or other personnel costs associated with reproducing the records.***

5 ILCS 140/6(a) (emphasis added).

14. As members of the news media, Plaintiffs' Request is not a voluminous request under the statutory definition of FOIA, which clearly states, in relevant part, "'Voluminous request' ***does not include a request made by news media and non-profit***, scientific, or academic organizations if the principal purpose of the request is: (1) to access and disseminate information concerning news and current or passing events; (2) for articles of opinion or features of interest to the public; or (3) for the purpose of academic, scientific, or public research or education." 5 ILCS 140/2(h) (emphasis added).

15. In its original Request, Plaintiffs clearly stated that they are members of the news media and non-profit, along with indicating that they are not making the request for a commercial purpose. Exhibit A.

16. Section 2(f) of FOIA clearly defines news media as "a newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format, a radio station, a television station, a television network, a community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing." 5 ILCS 140/2(f).

17. Plaintiff KIRK ALLEN qualifies as "news media," and he works for EDGAR COUNTY WATCHDOGS.

18. Plaintiff EDGAR COUNTY WATCHDOGS is a registered non-profit organization and an online news media website. *See* [www.edgarcountywatchdogs.com](http://www.edgarcountywatchdogs.com).

19. Further, Plaintiff EDGAR COUNTY WATCHDOGS is a (1) newspaper or other periodical issued at regular intervals whether in print or electronic format, (2) news service whether in print or electronic format, and (3) engaged in making news reels or other motion picture news for public showing.

20. Plaintiffs regularly publish articles that report on local government corruption, various state policies, and other news that concern the entire state of Illinois on the above-mentioned website for public showing. *Id.*

21. Plaintiffs are also members of multiple news media related organizations, including Investigative Reporters and Editors (“IRE”), the Society of Professional Journalists (“SPJ”), and the Chicago Headline Club (one of the nation’s largest local chapters of the SPJ).

22. Pursuant to Section 6(a) of FOIA, JOLIET TOWNSHIP may only charge Plaintiffs for the cost of purchasing the recording medium, which is \$50.00 for a 500GB external hard drive as stated in the invoice.

23. In addition to the unauthorized fee assessment, JOLIET TOWNSHIP has yet to provide a response or produce records regarding Parts 2 and 3 of the Request, which, upon information and belief, do not require an outside IT department to process.

24. As of the date of this filing, JOLIET TOWNSHIP has not complied with FOIA and has produced no records responsive to the request.

**COUNT I – JUNE 9, 2020, FOIA REQUEST,  
FAILURE TO PRODUCE RECORDS**

25. The above paragraphs are incorporated by reference.

26. JOLIET TOWNSHIP is a public body under FOIA.

27. The records sought in Plaintiffs’ FOIA request are non-exempt public records of JOLIET TOWNSHIP.

28. JOLIET TOWNSHIP violated FOIA by failing to produce the records.

**COUNT II – JUNE 9, 2020, FOIA REQUEST,  
FAILURE TO PERFORM AN ADEQUATE SEARCH**

29. The above paragraphs are incorporated by reference.

30. JOLIET TOWNSHIP is a public body under FOIA.

31. JOLIET TOWNSHIP bears the burden of proving beyond material doubt that it performed an adequate search for responsive records.

32. JOLIET TOWNSHIP has failed to come forward with sufficient evidence to carry this burden.

33. JOLIET TOWNSHIP has violated FOIA by failing to adequately search for responsive records.

**COUNT III – JUNE 9, 2020, FOIA REQUEST,  
WILLFUL AND INTENTIONAL VIOLATION OF FOIA**

34. The above paragraphs are incorporated by reference.

35. JOLIET TOWNSHIP is a public body under FOIA.

36. The records sought in Plaintiffs' FOIA request are non-exempt public records of JOLIET TOWNSHIP.

37. JOLIET TOWNSHIP willfully and intentionally, or otherwise in bad faith failed to comply with FOIA.

**WHEREFORE**, Plaintiffs ask that the Court:

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

Dated: August 12, 2020

RESPECTFULLY SUBMITTED,

*/s/ Joshua Hart Burday*

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Attorneys for Plaintiffs  
EDGAR COUNTY WATCHDOGS,  
KIRK ALLEN.

Matthew Topic  
Joshua Burday, ARDC# 6320376  
Merrick Wayne  
LOEVY & LOEVY  
311 North Aberdeen, 3rd Floor  
Chicago, IL 60607  
312-243-5900  
foia@loevy.com

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**From:** Kirk Allen [REDACTED]  
**Sent:** Tuesday, June 9, 2020 3:40 PM  
**To:** Daniel L. Vera <[supervisor@joliettownship.net](mailto:supervisor@joliettownship.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 the hard drive contents of the Dell XPS computer, serial number N781BU6. I am seeking only those records that are not exempt as outlined under FOIA.
2. A copy of all records of Destruction Certificates issued by the Secretary of State Local Records Commission in the last 12 months.
3. A copy of all requests to the Secretary of State Local Records Commission for approval to destroy public records in the last 12 months.

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 for commercial purposes), Section 3.2 (Recurrent requesters), Section 3.6 (Voluminous requests), and Section 6 (Authority to charge

**Exhibit A**



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.

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

[REDACTED]

[REDACTED], IL 61933

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**From:** Kirk Allen  
**Sent:** Friday, July 3, 2020 1:39 PM  
**To:** Daniel L. Vera <[supervisor@joliettownship.net](mailto:supervisor@joliettownship.net)>  
**Subject:** RE: FOIA Request

While I appreciate you providing me a quote to the Township, that is not a quote or invoice to me.

If you are asking that I pay the amount in the quote to the Township, please provide me an invoice accordingly so we can obtain the public records.

Thanks

Kirk Allen

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**From:** Daniel L. Vera <[supervisor@joliettownship.net](mailto:supervisor@joliettownship.net)>  
**Sent:** Friday, June 26, 2020 3:22 PM  
**To:** Kirk Allen [REDACTED]  
**Subject:** RE: FOIA Request

Attached is the quote from the IT Company.

Exhibit B

Daniel Vera

Supervisor

Joliet Township Government

(815) 726-4781

[supervisor@joliettownship.net](mailto:supervisor@joliettownship.net)

<http://www.joliettownship.net/>



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**From:** Kirk Allen [REDACTED]  
**Sent:** Tuesday, June 9, 2020 3:40 PM  
**To:** Daniel L. Vera <[supervisor@joliettownship.net](mailto:supervisor@joliettownship.net)>  
**Subject:** FOIA Request

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

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2. A copy of all records of Destruction Certificates issued by the Secretary of State Local Records Commission in the last 12 months.
3. A copy of all requests to the Secretary of State Local Records Commission for approval to destroy public records in the last 12 months.

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 for 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.

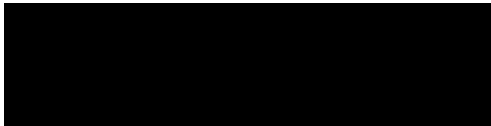
As outlined in FOIA, documents shall be furnished without charge or at a reduced charge, as determined by the public body, if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. Waiver or reduction 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.

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



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## FW: FOIA Request

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Kirk Allen [REDACTED]

Thu, Jul 9, 2020 at 10:24 AM

To: "Daniel L. Vera" <supervisor@joliettownship.net>

Any update on the invoice?

[Quoted text hidden]

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## FW: FOIA Request

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Kirk Allen [REDACTED]

Mon, Jul 13, 2020 at 12:25 PM

To: "Daniel L. Vera" <supervisor@joliettownship.net>

Can you please let me know the status of our request?

Also, what basis for asking for these fees are relying on?

Thanks

Kirk Allen

[Quoted text hidden]

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## FW: FOIA Request

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**From:** Daniel L. Vera <supervisor@joliettownship.net>  
**Sent:** Tuesday, July 14, 2020 3:16 PM  
**To:** Kirk Allen <[REDACTED]>  
**Subject:** RE: FOIA Request

Attached is the invoice for the costs that will be incurred from our IT company.

This is something that must be completed by our outside IT company

[Quoted text hidden]

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 **IT invoice.pdf**  
186K



175 West Jefferson  
Joliet, IL 60432  
Phone (815) 726-4781  
[www.joliettownship.net](http://www.joliettownship.net)

**TO:**  
Edgar County WatchDogs

## IT Costs

**FOR:**

Description	Amount
Onsite visit to create vhd file of computer #N781BU6 (2hrs at \$150/hr)	300.00
500 GB external hard drive	50.00
Total	\$350.00

Make all checks payable to Joliet Township Government

Submit Payment to:  
Joliet Township Government  
175 W. Jefferson Street  
Joliet, IL 60432



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## FW: FOIA Request

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Kirk Allen [REDACTED]

Wed, Jul 15, 2020 at 12:06 PM

Reply-To: Kirk Allen [REDACTED]

To: "supervisor@joliettownship.net" <supervisor@joliettownship.net>

While I understand what your outside IT company must do, can you tell me what statutory basis which you are using for the fees being assessed?

Thanks

Kirk Allen

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**From:** Daniel L. Vera <supervisor@joliettownship.net>

**Sent:** Tuesday, July 14, 2020 3:16 PM

**To:** Kirk Allen <[REDACTED]>

**Subject:** RE: FOIA Request

Attached is the invoice for the costs that will be incurred from our IT company.

This is something that must be completed by our outside IT company

Daniel Vera

[Quoted text hidden]