

FILED

IN THE CIRCUIT COURT OF THE TWELFTH CIRCUIT  
WILL COUNTY

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CIRCUIT COURT  
WILL COUNTY, ILLINOIS  
WILL COUNTY COURT ANNEX

EDGAR COUNTY WATCHDOGS,	)	
Plaintiff,	)	John C. Anderson
v.	)	Circuit Judge
WILL COUNTY SHERIFF'S OFFICE,	)	
Defendant.	)	Case No. 19-CH-1583

MEMORANDUM OPINION AND ORDER

This case is before the Court on cross-motions for summary judgment. The Court, having been advised in the premises and having taken the motions under advisement, finds and orders as follows:

I. BACKGROUND

This case involves two Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.*) requests submitted by Edgar County Watchdogs (ECW) to Will County Sheriff's Office (WCSO). The requests were dated August 7, 2019, and August 8, 2019, and relate to various police activity in Wesley Township.

A. The 8/7 Request

On August 7, 2019, ECW submitted a FOIA request to WCSO asking for (a) "[c]op[ies] of any 911 calls or any call made for help/assistance from an officer or police presence for wellness checks, disturbance or theft, at the Wesley Rivals Township Park for June 1 through June 30, 2019 – it is on Rivals Road;" (b) "[c]opies of any 911 calls or any other call made for help/assistance relative to anything oat Rivals Park on August 6, 2019; and (c) "[c]opies of any reports, notes, statements, etc. relating to anything at Wesley Township and/or Rivals Park for/on August 6, 2019."

On August 13, 2019, WCSO partially granted the 8/7 Request by producing Address Activity Reports for the requested dates and a copy of incident report, but redacted a significant amount of text. WCSO denied the request for the 911 calls made for help relating to "anything at Wesley Rivals Township Park" on August 6, 2019 on the basis that production would be unduly burdensome, and invited ECW to narrow the scope of the request.

On August 13, 2019, WCSO refused to remove its redaction of the narrative section of the incident report. That same day, ECW narrowed the scope of the 8/7 Request. On August 21, 2019, WCSO denied the narrowed request.

**B. The 8/8 Request**

On August 8, 2019, ECW sent another FOIA request to WCSO seeking (a) “[c]opies of any 911 calls or any call made for help/assistance from an officer or police presence for anything at the Wesley Rivals Township Park for August 8, 2019 – it is on Rivals Road”; and (b) “[c]opies of any reports, notes, statements, etc. relating to anything at Wesley Township and/or Rivals Park for/on August 8, 2019.”

On August 13, WCSO partially granted the 8/8 Request by providing an Address Activity Report for the requested date and a copy of an incident report. The narrative portion of the report was, like the prior one, heavily redacted.

**C. The Complaint**

EWC filed a six-count complaint. Counts I and IV assert claims for failure to produce records pursuant to the two respective FOIA requests. Counts II and V assert claims for failure to perform an adequate search for records pursuant to the two respective requests. And, Counts III and VI assert claims for willful and intentional violations of FOIA.

**D. The Motions for Summary Judgment**

In its motion, ECW sought an index. Further, ECW argues that “because ECW is under no obligation to disprove WCSO’s allegations, ECW will address WCSO’s evidence and arguments once they are provided in response to [ECW’s] motion.” The briefs relating to ECW’s motion make arguments regarding burden of proof, but say little else pertaining to the actual facts and evidence of the case.

WCSO, in its motion, contends that (1) voices on the 911 calls were “private” and “personal,” and thus exempt from disclosure under FOIA exemptions (1)(b) and (1)(c). See 5 ILCS 140/7(1)(b) and (c). Further, WCSO contends that it was unaware, at the time it denied ECW’s FOIA request, that it could reasonably “redact” (*i.e.*, alter or disguise) audio recordings. In other words, WCSO argues that, at the time it denied the FOIA, it was obligated to deny it because disclosure of the information fell under the “private” and “personal” exemptions and WCSO had no reasonable way to disclose the information without running afoul of the exemptions.

WCSO also argues that disclosure of audio recordings was exempt under the “confidentiality” provisions of FOIA section (1)(d)(iv). See 5 ILCS 140/7(1)(d)(iv). Finally, WCSO contends that it conducted an adequate search for records, and that imposition of civil penalties would be improper.

**E. The November 10, 2020 Hearing**

On November 10, 2020, the Court conducted a hearing on the parties' cross-motions. At that hearing, the Court granted ECW's motion to the extent ECW sought an index. See 5 ILCS 140/1-11(e). ECW conceded the adequacy of WCSO's search and, by extension, essentially conceded that WCSO is entitled to summary judgment on Counts II and V. The Court took the remaining issues under advisement.

**II. ANALYSIS**

**A. Standards for a Summary Judgment Motion**

Summary judgment is proper when the pleadings, affidavits, depositions and admissions of record, construed strictly against the moving party, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001). While summary judgment is considered a "drastic measure," it is an appropriate tool when the movant's rights are clear and free from doubt. *Morris*, 197 Ill. 2d at 35. Indeed, summary judgment should not be granted where a reasonable person could draw divergent inferences from undisputed facts. *Parkway Bank and Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶14. However, at the summary judgment stage of a suit, the nonmoving party must present the evidence it has; it is the moment in a lawsuit where one must "put up or shut up." *Korzen*, 2013 IL App (1st) 130380, ¶ 14.

Here, the parties filed cross-motions for summary judgment. When litigants file cross-motions for summary judgment, they agree that only questions of law exist, and they invite the court to decide the issues based on the record. *Nationwide Financial, LP v. Pobuda*, 2014 IL 116717, ¶24; *Bremer v. City of Rockford*, 2016 IL 119889, ¶ 20, as modified on denial of reh'g (Apr. 7, 2017).

**B. Interpretive Principles Regarding the FOIA Statute**

Illinois enacted the FOIA statute in accordance with the public policy principle 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." 5 ILCS 140/1 (West 2016); see also *Bowie v. Evanston Community Consolidated School District No. 65*, 128 Ill. 2d 373, 378 (1989) (statute's purpose is "to open governmental records to the light of public scrutiny"). "Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest." 5 ILCS 140/1. For these reasons, public records are presumptively open and accessible under FOIA. See *McGee v. Kelley*, 2017 IL App (3d) 160324, ¶12. Courts liberally construe the FOIA statute to achieve the goal of "provid[ing] the public with easy access to government

information.” *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 416 (2006).

The Act also provides that “[r]estraints on access to information, to the extent permitted by this Act, 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 any or all of the people.” 5 ILCS 140/1 (West 2016). Thus, the Act’s exceptions are narrowly construed. *City of Chicago v. Janssen Pharmaceuticals*, 2017 IL App (1st) 150870, ¶ 15; *Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838, ¶ 11.

### C. Application of WCSO’s Claimed Exemptions

WCSO argues that the tonal qualities of voices on the recording would allow callers to be identified, thus making their voices exempt. ECW does not adequately dispute that argument. Rather, ECW argues that the voices could be disguised.

While there is very little Illinois case law regarding the obligation to modify audio and video recordings (*e.g.*, by blurring faces or disguising voices) under FOIA, the Court is somewhat guided by our supreme court’s finding in *Bowie v. Evanston Comm. Cons. School Dist. No. 65*, 128 Ill. 2d 373, 382 (1989). In *Bowie*, the court held that “[d]eleting information from a record does not create a “new” record, even if all but one or two items of information have been deleted. Similarly, scrambling a record does not lead to creation of a ‘new’ record.” *Id.*

Accordingly, this Court finds that the necessity to blur a face or disguise a voice does not, by itself, automatically relieve a governmental entity of its FOIA obligations. The Court does *not*, however, make a blanket finding that the need to make such alterations cannot support a FOIA denial. For example, one of the cases cited by ECW, *Time Warner Cable News NY1 v. New York City Police Dep’t*, 53 Misc. 3d 657, 674, 36 N.Y.S.3d 579, 594 (N.Y. Sup. Ct. 2016), on reargument, (N.Y. Sup. Ct. 2017), included testimony that it would take 2858 hours to properly edit video. So, despite ECW’s arguments regarding the availability media editing software, and even its cost, there may be other factors such as the time necessary to adequately edit the media. That issue is not before the Court today, but the Court wishes to make clear that its ruling today does not foreclose a FOIA respondent from asserting “undue burden” simply because it needs to modify audio or video recordings.

Ultimately, though, this fight over voice disguising software does not mean much because, worst case scenario, WCSO ought to have produced a transcript of the recordings under section 6(a) of the FOIA statute. 5 ILCS 140/6(a).

In sum, the Court finds that WCSO need not provide undisguised voice recordings. Using undisguised voice recordings would fall within the claimed FOIA exemptions.

However, WCSO is obligated to either provide disguised-voice recordings, or if that is not reasonable due to time and cost considerations (*i.e.*, if it is an undue burden, which is a possibility has not been adequately raised to the Court), then WCSO must provide a transcript of the recordings.

**D. Propriety of Civil Penalties**

In the “wherefore clause” of its motion, WCSO requests that the Court deny ECW’s request for statutory damages and fees.<sup>1</sup> In the argument section of its motion, WCSO supports this request with the assertion that “[p]laintiff is no longer seeking civil penalties so no further argument need be made.” (WCSO’s MSJ, ¶173, citing Answer to Aff. Def., ¶17.) The Court concurs that ECW effectively withdrew its request for civil penalties on October 16, 2020, when it answered WCSO’s affirmative defenses. In any event, the Court would find that civil penalties are inappropriate in this case. WCSO acted in good faith when it denied the FOIA requests.

**III. CONCLUSION**

In light of the foregoing, it is ordered:

1. WCSO has submitted the requested records to the Court, in an unredacted and unaltered recorded state, for an *in camera* review. The Court finds that the substantive content of that material does not fall under FOIA exemptions for material that is personal, private, or confidential. With regard to the voices on the recordings, the Court accepts WCSO’s arguments that the voice qualities are exempt; this is a question that ECW does not adequately contest.

2. Relative to Counts I and IV, ECW’s motion for summary judgment is granted to the extent that (a) ECW is entitled to an index; and (b) WCSO should have either produced the requested audio recordings with disguised voices or, if that was not feasible, WCSO should have given ECW the option to accept a transcript. WCSO could have passed the costs for this on to ECW to the extent permitted by 5 ILCS 140/6. To the extent it has not yet done so, WCSO is ordered to provide ECW with the requested audio recordings and documents. If there are privacy concerns, WCSO may disguise the recorded voices. If disguising the voices presents an undue burden or is otherwise not feasible, they may file an appropriate motion for further direction and/or WCSO shall provide a transcript to ECW if ECW wants one.

3. Relative to Counts II and V, summary judgment is granted in WCSO’s favor.

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<sup>1</sup> The body of the motion makes reference to a request for civil penalties in Count IV, but that appears to be erroneous. ECW requested penalties in Counts III and VI.

4. Relative to Counts III and VI, WCSO's motion for summary judgment is granted; ECW withdrew its request for civil penalties. Regardless, the Court finds there was no willful or wanted failure to comply with FOIA. ECW is not entitled to civil penalties.

5. ECW may, pursuant to 5 ILCS 140/11(i), file a petition for fees. However, the Court does not make a determination today as to whether ECW is *entitled* to fees. Rather, the Court is permitting ECW to simply *file* a fee petition. The issue of fees will be considered another day. And, since WCSO prevailed on certain counts and ECW prevailed on certain counts, the Court might consider whether fees ought to be offset, reduced, or denied altogether. See *Powers v. Rockford Stop-N-Go, Inc.*, 326 Ill. App. 3d 511, 515 (2001) ("when the dispute involves multiple claims and both parties have won and lost on different claims, it may be inappropriate to find that either party is the prevailing party and an award of attorney fees to either is inappropriate").

6. The Court has provided the unredacted and unaltered records to the clerk. The clerk is directed to place them in the Court, but impound them. They are not to be accessed without Court authorization.

7. The status date of January 13, 2020 is stricken and reset for February 10, 2020. If the parties are not available that day, they may confer and choose another date in February, and submit an agreed order through Odyssey resetting the status date. Parties are notified via email.

Dated: January 11, 2021

ENTERED:  
  
John C. Anderson  
Circuit Judge