

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

KIRK ALLEN,)
EDGAR COUNTY WATCHDOGS,)
)
Plaintiffs,)
)
v.)
)
ILLINOIS DEPARTMENT OF)
PUBLIC HEALTH,)
)
Defendant.)

COMPLAINT

NOW COME Plaintiffs, KIRK ALLEN and EDGAR COUNTY WATCHDOGS, by the undersigned attorneys of the Law Offices of Robert T. Hanlon & Associates P.C., and bring this suit to overturn Defendant ILLINOIS DEPARTMENT OF PUBLIC HEALTH’s (“IDPH”) failure, in willful violation of the Illinois Freedom of Information Act, to comply with Plaintiffs’ Freedom of Information Act request for the source data used in IDPH’s “2019 Novel Coronavirus (COVID-19) Situation Update” presentation decks, which are shared and shown during its webinars. 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.

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 request in this case.

5. Defendant ILLINOIS DEPARTMENT OF PUBLIC HEALTH (“IDPH”) is a public body located in Cook County, Illinois.

SEPTEMBER 19, 2020, FOIA REQUEST

6. On September 19, 2020, Plaintiffs submitted a FOIA request to IDPH for a “copy of the source data used for the 2019 Novel Coronavirus (COVID 19) Situational Update webinar documents.” Plaintiffs stated that the request seeks “that data for each published webinar.” Plaintiffs further clarified: “The most recent is the September 16, 2020 document, and the source data I am seeking is for the pie chart on page 13 of that document.” Exhibit A.

7. On September 28, 2020, IDPH sought an extension of five-business days. Exhibit B.

8. On October 23, 2020, Plaintiffs requested a status update, but IDPH never provided the requested records or responded to the request for records. Exhibit B.

Section 3(e) of FOIA allows the public body to take an extension for “not more than 5 business days from the original due date.” Section 3(e) also states that the requester and the public body “may agree in writing to extend the time for compliance for a time period to be determined by the parties.” 5 ILCS 140/3(e).

9. IDPH’s deadline to respond was October 5, 2020.

10. IDPH never sought and Plaintiffs never agreed to any additional extensions, in writing or otherwise.

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

12. 5 ILCS 140/3 (d) provides in pertinent part as follows:

Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. Denial shall be in writing as provided in Section 9 of this Act. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request. ... A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).

13. The Illinois Freedom of Information Act (5 ILCS 140/9(a)) provides the following with respect to each denial:

Sec. 9. (a) Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request, the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial. Each notice of denial by a public body shall also inform such person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor. Each notice of denial shall inform such person of his right to judicial review under Section 11 of this Act.

**COUNT I – SEPTEMBER 19, 2020, FOIA REQUEST,
FAILURE TO PRODUCE RECORDS**

14. Plaintiffs hereby incorporate by reference paragraphs 1-13.
15. IDPH is a public body under FOIA.
16. The records sought in the FOIA request are non-exempt public records of IDPH.
17. IDPH violated FOIA by: A) failing to produce the requested records, B) failing to provide a written notice of denial. C) failing to either cite to an exemption, D) failing to provide a factual basis for any exemption claimed, E) failing to alert Plaintiff of the right to seek review by the Public Access Counselor and F) failing to notify plaintiff of the right to seek judicial review.
18. The failure to provide the written records was willful and wanton or otherwise in bad faith. It has now been nearly six (6) months since the request was made.

WHEREFORE, Plaintiffs pray that this honorable Court grant the following relief:

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

**COUNT II – SEPTEMBER 19, 2020, FOIA REQUEST,
FAILURE TO PERFORM AN ADEQUATE SEARCH**

19. Plaintiffs hereby incorporate by reference paragraphs 1-18.
20. IDPH is a public body under FOIA.
21. IDPH bears the burden of proving beyond material doubt that it performed an adequate search for responsive records.
22. IDPH has failed to come forward with sufficient evidence to carry this burden.
23. IDPH has violated FOIA by failing to adequately search for responsive records.

WHEREFORE, Plaintiffs pray that this honorable Court grant the following relief:

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

**COUNT III – SEPTEMBER 19, 2020, FOIA REQUEST,
WILLFUL AND INTENTIONAL OR OTHERWISE BAD FAITH VIOLATION OF FOIA**

24. Plaintiffs hereby incorporate by reference paragraphs 1-18.
25. The act provide in subsection 3(j) the following:

If the court determines that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence.
26. The records sought in the FOIA request are non-exempt public records of IDPH.

27. IDPH willfully and intentionally, or otherwise in bad faith failed to comply with FOIA.

28. IDPH violated FOIA on each of the following occurrences:

- a. Failing to timely respond to plaintiff's FOIA request;
- b. failing to provide a written notice of the denial;
- c. failing to either cite to an exemption;
- d. failing to provide a factual basis for any exemption claimed;
- e. failing to alert Plaintiff of the right to seek review by the Public Access Counselor; and
- f. failing to notify plaintiff of the right to seek judicial review

WHEREFORE, Plaintiffs pray that this honorable Court grant the following relief:

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

Dated: April 21, 2021

RESPECTFULLY SUBMITTED,
/s/ Robert T. Hanlon

Attorneys for Plaintiffs,
KIRK ALLEN,
EDGAR COUNTY WATCHDOGS

Robert Hanlon
131 East Calhoun Street
Woodstock, Illinois 60098

Exhibit A

From: Kirk Allen [REDACTED]
Sent: Saturday, September 19, 2020 9:11 AM
To: DPH.FOIA
Subject: FW: FOIA Request

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

1. A copy of the source data used for the 2019 Novel Coronavirus (COVID 19) Situational Update webinar documents. Seeking that data for each published webinar. The most recent is the September 16, 2020 document, and the source data I am seeking is for the pie chart on page 13 of that document.

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



Exhibit B

From: Kirk Allen [REDACTED]
Sent: Friday, October 23, 2020 4:02 PM
To: DPH.FOIA
Subject: RE: IDPH Freedom of Information Request DPH 2804 FOIA

Any update on this overdue FOIA request?

Kirk Allen

From: DPH.FOIA <DPH.FOIA@Illinois.gov>
Sent: Monday, September 28, 2020 3:07 PM
To: Kirk Allen [REDACTED]
Subject: IDPH Freedom of Information Request DPH 2804 FOIA

Dear Mr. Allen,

This email is in regards to your recent Freedom of Information Act request for a copy of the source data used for the 2019 Novel Coronavirus (COVID 19) Situational Update webinar documents. Seeking that data for each published webinar. The most recent is the September 16, 2020 document, and the source data I am seeking is for the pie chart on page 13 of that document.

The Department has extended the date in which your records must be provided to October 5, 2020. Section 3(e) of the Freedom of Information Act, 5 ILCS 140, permits the Department to extend the time for response if the request for records cannot be complied with by the public body within the time limits prescribed by the Act without unduly burdening or interfering with the operations of the public body.

Sincerely,

Lisa Reynolds
Executive I
Division of Legal Services/Illinois Department of Public Health
535 W. Jefferson, 5th Floor
Springfield, IL 62761
Lisa.Reynolds@illinois.gov

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