

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

EDGAR COUNTY WATCHDOGS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	2022CH000020
	)	
ILLINOIS PRISONER REVIEW BOARD,	)	
	)	
Defendant.	)	

**COMPLAINT**

NOW COMES Plaintiff, EDGAR COUNTY WATCHDOGS by the undersigned attorneys, Loevy & Loevy, and brings this Freedom of Information Act (FOIA) suit to force ILLINOIS PRISONER REVIEW BOARD (“PRB”) to comply with FOIA. Even though Plaintiff provided multiple opportunities for PRB to remedy its noncompliance, in violation of FOIA, PRB refused to produce various records pertaining to the membership of the Board. In support of its Complaint, Plaintiff states 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. Plaintiff EDGAR COUNTY WATCHDOGS (“ECW”) is a non-profit news media organization located in Paris, Illinois.

5. Defendant ILLINOIS PRISONER REVIEW BOARD (“PRB”) is a public body located in Springfield, Illinois.

### **NOVEMBER 2, 2021 FOIA REQUEST (RESIGNATION LETTERS)**

6. On November 2, 2021, ECW submitted a seven-part FOIA request to PRB for the following records: 1) Copy of all Board Members’ Open Meetings Act Training Certificates; 2) Copy of the Freedom of Information Act Officer’s FOIA Training Certificate; 3) Copy of the Board minutes from all meetings since March, 2021; 4) Copy of the Board Meeting audio and/or video recordings since March, 2021; 5) Copy of names of all Board Meetings that have been approved by the Senate; 6) Copy of all Board Members’ resignation letters or communications pertaining to their resignations in the last 3 years; and 7) Copy of all Board Members’ names who have been reappointed after stepping down in the last 3 years. Ex. 1.

7. On December 6, 2021, PRB responded to the FOIA request by providing its response under each Part of the request. Ex. 2 at 2.

- a. Regarding Part 1 and Part 2 of the request, PRB stated, “I have not been able to access the Attorney General’s website that conducts training and therefore

have been unable to answer this question. You need to send a FOIA to the attorney General's Office." *Id.*

- b. Regarding Part 3, PRB stated that the minutes are available on the Board's website. *Id.*
- c. Regarding Part 4, PRB stated, "The Board does not have video or audio [recordings] of the regular Board meetings." *Id.*
- d. Regarding Part 5, PRB stated, the "Senate does not approve the Board Meetings." *Id.*
- e. Regarding Part 6, PRB stated, "Only 3 board members have resigned in the last 3 years, namely Savage, Harris, and Tupy. *Id.*
- f. Regarding Part 7, PRB stated, "Only 1 Board member has been re-appointed in the last three years, that member is Tupy." *Id.*

8. While PRB's response as a whole was not a proper response pursuant to Section 9(a) of FOIA, ECW only challenges PRB's response regarding Parts 1, 2, 4, and 6 of the request.

9. On December 6, 2021, ECW followed up with PRB and clarified that the original request did not ask for answers, but instead sought records. ECW specifically pointed out that PRB has not provided the resignation letters sought in Part 6 of the request. Ex. 2 at 1.

10. Having received no further correspondence from PRB, ECW sought a status update of the request on January 7, 2022, but PRB never responded. Ex 3.

11. For records responsive to Part 1, 2, and 4, PRB has not demonstrated that it conducted an adequate search.

12. For Part 6, PRB named the Board Members who resigned in the last 3 years but did not provide the "resignation letters" submitted by those Board Members or any

communications pertaining to their resignations, which are the records that ECW sought in its original request.

13. As of the date of this filing, PRB has not complied with FOIA and has not produced records responsive to the request.

**JANUARY 24, 2022 FOIA REQUEST (APPOINTMENT LETTERS)**

14. On January 24, 2022, ECW submitted a FOIA request to PRB for a “[c]opy of all records evidencing the appointment of Board members in the last three years, to include any re-appointments.” Ex. 4.

15. On February 9, 2022, ECW asked for a status update of the request.

16. On February 15, 2022, PRB stated that his request “should be directed to the Governor’s Office.” Ex. 5.

17. Whether the Governor’s Office also has responsive records is irrelevant to PRB’s FOIA obligations.

18. PRB has not demonstrated that it conducted an adequate search for the records responsive to the request.

19. PRB has not conducted an adequate search for the records.

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

**COUNT I – NOVEMBER 2, 2021 FOIA REQUEST (RESIGNATION LETTERS),  
FAILURE TO PRODUCE RECORDS**

21. The above paragraphs are incorporated by reference.

22. PRB is a public body under FOIA.

23. The records sought in the FOIA requests are non-exempt public records of PRB.

24. PRB violated FOIA by failing to produce records responsive to the request.

**COUNT II – NOVEMBER 2, 2021 FOIA REQUEST (RESIGNATION LETTERS),  
FAILURE TO PERFORM AN ADEQUATE SEARCH**

25. The above paragraphs are incorporated by reference.

26. PRB is a public body under FOIA.

27. PRB bears the burden of proving beyond material doubt that it performed an adequate search for records responsive to the request.

28. PRB has failed to come forward with sufficient evidence to carry this burden.

29. PRB has violated FOIA by failing to adequately search for records responsive to the request.

**COUNT III – NOVEMBER 2, 2021 FOIA REQUEST (RESIGNATION LETTERS),  
WILLFUL AND INTENTIONAL VIOLATION OF FOIA**

30. The above paragraphs are incorporated by reference.

31. PRB is a public body under FOIA.

32. The records sought in the FOIA request are non-exempt public records of PRB.

33. During the time period of November 2, 2021, to present, PRB's FOIA Officer was aware that PRB has to conduct an adequate search for records responsive to the request.

34. During the time period of November 2, 2021, to present, PRB's FOIA Officer was aware that ECW sought various records pertaining to the Board, and not merely the names of the Board members.

35. Because PRB failed to demonstrate that it conducted an adequate search for records responsive to the request and because there was no good-faith basis for PRB to withhold the records responsive to the request, PRB willfully and intentionally, or otherwise in bad faith failed to comply with FOIA.

**COUNT IV – JANUARY 24, 2022 FOIA REQUEST (APPOINTMENT LETTERS),  
FAILURE TO PRODUCE RECORDS**

- 36. The above paragraphs are incorporated by reference.
- 37. PRB is a public body under FOIA.
- 38. The records sought in the FOIA requests are non-exempt public records of PRB.
- 39. PRB violated FOIA by failing to produce records responsive to the request.

**COUNT V – JANUARY 24, 2022 FOIA REQUEST (APPOINTMENT LETTERS),  
FAILURE TO PERFORM AN ADEQUATE SEARCH**

- 40. The above paragraphs are incorporated by reference.
- 41. PRB is a public body under FOIA.
- 42. PRB bears the burden of proving beyond material doubt that it performed an adequate search for records responsive to the request.
- 43. PRB has failed to come forward with sufficient evidence to carry this burden.
- 44. PRB has violated FOIA by failing to adequately search for records responsive to the request.

**COUNT VI – JANUARY 24, 2022 FOIA REQUEST (APPOINTMENT LETTERS),  
WILLFUL AND INTENTIONAL VIOLATION OF FOIA**

- 45. The above paragraphs are incorporated by reference.
- 46. PRB is a public body under FOIA.
- 47. The records sought in the FOIA request are non-exempt public records of PRB.
- 48. During the time period of January 24, 2021, to present, PRB's FOIA Officer was aware that PRB has to conduct an adequate search for records responsive to the request.
- 49. During the time period of January 24, 2021, to present, PRB's FOIA Officer was aware that ECW sought records evidencing the appointment of Board members, which include appointment letters and other communications between the PRB and the Board members.

50. Because PRB failed to demonstrate that it conducted an adequate search for records responsive to the request and because there was no good-faith basis for PRB to withhold the records responsive to the request, PRB willfully and intentionally, or otherwise in bad faith failed to comply with FOIA.

**WHEREFORE**, ECW asks that the Court:

- i. declare that PRB violated FOIA;
- ii. order PRB to conduct an adequate search for the records responsive to the requests;
- iii. order PRB to produce records responsive to the requests;
- iv. enjoin PRB from withholding non-exempt public records under FOIA;
- v. order PRB to pay civil penalties;
- ix. award Plaintiff reasonable attorneys' fees and costs; and
- x. award such other relief the court considers appropriate.

DATED: 2/23/2022

RESPECTFULLY SUBMITTED,  
/s/ Shelley Geiszler

Attorneys for Plaintiff  
EDGAR COUNTY WATCHDOGS,

Matthew Topic, ARDC# 6290922  
Josh Loevy, ARDC# 6327897  
Merrick Wayne, ARDC# 6330610  
Shelley Geiszler, ARDC# 6335917  
LOEVY & LOEVY  
311 North Aberdeen, 3rd Floor  
Chicago, IL 60607  
312-243-5900  
foia@loevy.com

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## FW: FOIA Request

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**From:** Kirk Allen  
**Sent:** Tuesday, November 2, 2021 10:01 AM  
**To:** [PRB.Operations@illinois.gov](mailto:PRB.Operations@illinois.gov); [PRB.FOIA@illinois.gov](mailto:PRB.FOIA@illinois.gov)  
**Subject:** FW: FOIA Request

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**From:** Kirk Allen  
**Sent:** Tuesday, November 2, 2021 9:59 AM  
**To:** [jason.sweat@illinois.gov](mailto:jason.sweat@illinois.gov)  
**Subject:** FOIA Request

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

1. Copy of all board members Open Meetings Act Training Certificates
2. Copy of the Freedom of Information Act Officer's FOIA training Certificate.
3. Copy of the board minutes from all meetings since March of 2021.
4. Copy of the Board Meeting recordings, video and/or audio, since March of 2021.
5. Copy of names of all Board Meetings who have been approved by the Senate.
6. Copy of all board members' resignation letters or communications in the last 3 years.
7. Copy of all Board Member names who have been reappointed after stepping down in the last 3 years.

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 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

PO Box 593

Kansas, IL 61933

## RE: FOIA Request

Kirk Allen <Kirk@illinoisleaks.com>  
To: "PRB.FOIA" <PRB.FOIA@illinois.gov>

Mon, Dec 6, 2021 at 4:03 PM

In regards to Item number 1 and 2, those were not questions. I asked for records. Please provide the records or an appropriate response as required by FOIA.

In regards to item number 5, there was a typo. I am requesting a copy of the names of all Board MEMBERS who have been approved by the Senate.

As far as minutes being online, you are required to provide the appropriate link to that information. Please provide the links as I have been unable to locate the requested information.

In regards to item 6, you have not provided the resignation letters. Please provide the requested letters.

I await the appropriate response.

Thanks

Kirk Allen

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**From:** PRB.FOIA <PRB.FOIA@illinois.gov>  
**Sent:** Monday, December 6, 2021 3:50 PM  
**To:** Kirk Allen <Kirk@illinoisleaks.com>  
**Subject:** RE: FOIA Request

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**From:** Kirk Allen <Kirk@illinoisleaks.com>  
**Sent:** Tuesday, November 2, 2021 10:01 AM  
**To:** PRB.Operations <PRB.Operations@Illinois.gov>; PRB.FOIA <PRB.FOIA@illinois.gov>  
**Subject:** [External] FW: FOIA Request

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**From:** Kirk Allen  
**Sent:** Tuesday, November 2, 2021 9:59 AM

**Exhibit 2**

To: [jason.sweat@illinois.gov](mailto:jason.sweat@illinois.gov)  
Subject: FOIA Request

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

1. Copy of all board members Open Meetings Act Training Certificates

I have not been able to access the Attorney General's website that conducts training and therefore have been unable to answer this question. You need to send a FOIA to the attorney General's Office.

2. Copy of the Freedom of Information Act Officer's FOIA training Certificate.

I have not been able to access the Attorney General's website that conducts training and therefore have been unable to answer this question. You need to send a FOIA to the attorney General's Office.

3. Copy of the board minutes from all meetings since March of 2021.

The Board Minutes that have been approved are on line and available on the Board's website. You can look at all the minutes.

4. Copy of the Board Meeting recordings, video and/or audio, since March of 2021.

The Board does not have video or audio meetings of the regular Board meetings.

5. Copy of names of all Board Meetings who have been approved by the Senate.

The Senate does not approve the Board Meetings.

6. Copy of all board members' resignation letters or communications in the last 3 years.

Only 3 board members have resigned in the last 3 years, namely Savage, Harris and Tupy.

7. Copy of all Board Member names who have been reappointed after stepping down in the last 3 years.

Only 1 Board member has been re-appointed in the last three years that member is Tupy.

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 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.

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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

PO Box 593

Kansas, IL 61933

State of Illinois - CONFIDENTIALITY NOTICE: The information contained in this communication is confidential, may be attorney-client privileged or attorney work product, may constitute inside information or internal deliberative staff communication, and is intended only for the use of the addressee. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify the sender immediately by return e-mail and destroy this communication and all copies thereof, including all attachments. Receipt by an unintended recipient does not waive attorney-client privilege, attorney work product privilege, or any other exemption from disclosure.

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## RE: FOIA Request

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**From:** Kirk Allen  
**Sent:** Friday, January 7, 2022 8:33 AM  
**To:** [prb.foia@illinois.gov](mailto:prb.foia@illinois.gov)  
**Subject:** RE: FOIA Request

Are you going to respond to this request that is well past due?

Kirk Allen

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**From:** Kirk Allen  
**Sent:** Monday, December 6, 2021 4:03 PM  
**To:** PRB.FOIA <[PRB.FOIA@illinois.gov](mailto:PRB.FOIA@illinois.gov)>  
**Subject:** RE: FOIA Request

In regards to Item number 1 and 2, those were not questions. I asked for records. Please provide the records or an appropriate response as required by FOIA.

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As far as minutes being online, you are required to provide the appropriate link to that information. Please provide the links as I have been unable to locate the requested information.

**Exhibit 3**

In regards to item 6, you have not provided the resignation letters. Please provide the requested letters.

I await the appropriate response.

Thanks

Kirk Allen

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**From:** PRB.FOIA <[PRB.FOIA@illinois.gov](mailto:PRB.FOIA@illinois.gov)>

**Sent:** Monday, December 6, 2021 3:50 PM

**To:** Kirk Allen <[Kirk@illinoisleaks.com](mailto:Kirk@illinoisleaks.com)>

**Subject:** RE: FOIA Request

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**From:** Kirk Allen <[Kirk@illinoisleaks.com](mailto:Kirk@illinoisleaks.com)>

**Sent:** Tuesday, November 2, 2021 10:01 AM

**To:** PRB.Operations <[PRB.Operations@Illinois.gov](mailto:PRB.Operations@Illinois.gov)>; PRB.FOIA <[PRB.FOIA@illinois.gov](mailto:PRB.FOIA@illinois.gov)>

**Subject:** [External] FW: FOIA Request

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**From:** Kirk Allen

**Sent:** Tuesday, November 2, 2021 9:59 AM

**To:** [jason.sweat@illinois.gov](mailto:jason.sweat@illinois.gov)

**Subject:** FOIA Request

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The Board does not have video or audio meetings of the regular Board meetings.

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The Senate does not approve the Board Meetings.

6. Copy of all board members' resignation letters or communications in the last 3 years.

Only 3 board members have resigned in the last 3 years, namely Savage, Harris and Tupy.

7. Copy of all Board Member names who have been reappointed after stepping down in the last 3 years.

Only 1 Board member has been re-appointed in the last three years that member is Tupy.

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 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.

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Thanks,

Kirk Allen

Edgar County Watchdogs

PO Box 593

Kansas, IL 61933

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## FOIA Request

1 message

Kirk Allen <Kirk@illinoisleaks.com>  
To: "prb.foia@illinois.gov" <prb.foia@illinois.gov>

Mon, Jan 24, 2022 at 3:26 PM

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

1. Copy of all records evidencing the appointment of Board members in the last three years, to include any re-appointments.

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 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.

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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 4**

PO Box 593

Kansas, IL 61933

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## FOIA Request

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**From:** PRB.FOIA <[PRB.FOIA@illinois.gov](mailto:PRB.FOIA@illinois.gov)>  
**Sent:** Tuesday, February 15, 2022 6:10:58 PM  
**To:** Kirk Allen <[Kirk@illinoisleaks.com](mailto:Kirk@illinoisleaks.com)>  
**Subject:** RE: FOIA Request

Mr. Allen, your request should be directed to the Governor's Office. Thank you.

*Kathalah A. Clay, Esq.*

Chief Legal Counsel

Illinois Prisoner Review Board

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**From:** Kirk Allen <[Kirk@illinoisleaks.com](mailto:Kirk@illinoisleaks.com)>  
**Sent:** Monday, January 24, 2022 3:27 PM

[Quoted text hidden]

[Quoted text hidden]

State of Illinois - CONFIDENTIALITY NOTICE: The information contained in this communication is confidential, may be attorney-client privileged or attorney work product, may constitute inside information or internal deliberative staff communication, and is intended only for the use of the addressee. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify the sender immediately by return e-mail and destroy this communication and all copies thereof, including all attachments. Receipt by an unintended recipient does not waive attorney-client privilege, attorney work product privilege, or any other exemption from disclosure.