

**IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
DuPAGE COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Plaintiff,)	
)	No. 2022-CF-000259
v.)	
)	Hon. Daniel P. Guerin
DANA DAVENPORT,)	
)	
Defendant.)	
)	
)	

PETITION FOR LEAVE TO INTERVENE

Prospective Intervenor Edgar County Watchdogs, Inc. (“Intervenor”) hereby files this Petition for Leave to Intervene in order to request that this Court lift its prior order denying public access to public records held by government agencies and rescind its order to dispose of evidence. In support of this Petition, Intervenor states as follows:

1. This case involves a local liquor commissioner who was arrested for, among other charges, DUI. According to court records, she entered a guilty plea for DUI. She was ordered to pay \$1,456 in fines, assessments, and court costs and also ordered to attend counseling.
2. Intervenor is a news organization that publishes “Illinois Leaks” and has provided the public with news coverage of this important judicial matter. *See* Illinois Leaks, “Judge Prohibits Release of Liquor Commissioner’s DUI Police Report and Body Cam Footage”, April 8, 2022 at <https://edgarcountywatchdogs.com/2022/04/judge-prohibits-release-of-liquor-commissioners-dui-police-report-and-body-cam-footage/>. Intervenor seeks access to public records through the Illinois Freedom of Information Act, 5 ILCS 140/1 to 5 ILCS 140/11.6.

3. The Court entered an order, which appears to have been prepared by the State, prohibiting law enforcement agencies from disclosing public records regarding *People v. Davenport* to Intervenor or any other member of the public. Intervenor's requests for access have been denied based on the Court's order.

3. Illinois law and 735 ILCS 5/2-408 provide that intervention is a means for a news organization to seek access to records. *See In re Marriage of Kelly*, 2020 IL App (1st) 200130, at ¶ 1 (noting that radio station and newspaper were allowed to intervene in high profile divorce case in order to challenge sealing of court documents); *People v. Pelo*, 384 Ill. App. 3d 776, 780 (4th Dist. 2008) (allowing intervention), *A. P. v. M E. E.*, 354 Ill. App. 3d 989, 991 (1st Dist. 2004) (reversing trial court's denial of access to media intervenors in civil case). Those principles apply equally as well when a media organization is seeking to object to a court's attempt to close off access to public records. Intervention is an appropriate method for allowing a media organization to exercise its rights.

4. Public records such as these are presumptively available to requesters under FOIA. As the General Assembly states in section 1 of FOIA: "it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." 5 ILCS 140/1. FOIA further provides that "[a]ny 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

5. In addition, the Court entered a Criminal Sentence Order upon Ms. Davenport's guilty plea, and that order stated as follows: "Evidence shall be disposed after 45 days unless

there are more court filings.” Intervenor is concerned about the destruction of any public records in this matter, particularly when those records have been closed to public view based on this Court’s order.

6. Intervenor therefore seeks leave to intervene in this matter for the purpose of asking the Court to reconsider its order foreclosing the public from access to vital public records and to ask that the Court revise its Criminal Sentence Order to remove the reference to disposal of evidence.

WHEREFORE, Intervenor respectfully requests that the Court grant this Petition for Leave to Intervene, grant Intervenor leave to intervene and to file Intervenor’s Motion to Lift Order Prohibiting Public Access and to Revise Criminal Sentence Order (attached hereto as Ex. A), grant Intervenor’s Motion and lift the order denying access to public records, revise the Criminal Sentence Order to remove the reference to disposal of evidence, and grant such further relief as is just.

Dated: November 17, 2022

Respectfully submitted,

EDGAR COUNTY WATCHDOGS, INC.

By: /s/ Brendan J. Healey
One of its attorneys

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EXHIBIT A

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**INTERVENOR’S MOTION TO LIFT ORDER PROHIBITING
PUBLIC ACCESS AND TO REVISE CRIMINAL SENTENCE ORDER**

In this high-profile case in which a municipal liquor commissioner was arrested for, among other things, DUI, the Court has entered an order prohibiting law enforcement agencies from disclosing any public records about the case (the “FOIA Order”). According to the FOIA Order, the Naperville Police Department and DuPage County Sheriff’s Office are prohibited from disclosing public records in response to requests under the Illinois Freedom of Information Act (“FOIA”). The Court cited preserving defendant’s right to a fair trial in entering the FOIA Order, but now that the Ms. Davenport has pled guilty there is no longer any need to prohibit public disclosure of her records. Intervenor Edgar County Watchdogs therefore respectfully suggests that this blanket prohibition on disclosure is neither necessary nor consistent with an established body of law providing for the disclosure of public records. In enacting FOIA, the Illinois legislature clearly stated the State of Illinois’ strong interest in making public records available to the public. The FOIA Order subverts the will of the legislature and addresses an issue (fair trial rights) that is now moot. The FOIA Order does state, however, that it will remain

in effect only until further order of the Court. Intervenor respectfully requests that this Court enter that further order and lift the FOIA Order. Lifting the FOIA Order will provide the public with the opportunity to seek records that the legislature has definitively stated should be made available.

In addition, after Ms. Davenport pled guilty, the Court entered an order directing the disposal of evidence. The potential destruction of public records, particularly in a high profile case, would deprive the media and public of access to crucial records. Disposal would be particularly problematic when public access to those same records has been foreclosed. Intervenor therefore respectfully requests that the Court revise that order to remove any reference to disposal of evidence.

I. Facts

Defendant Dana Davenport is a prominent Naperville attorney and was, until earlier this year, a member of the Naperville Liquor Commission. In February of 2022, she was arrested and charged with, among other things, DUI. She promptly resigned her position after the arrest.

Ms. Davenport's case has garnered a great deal of public attention and been covered not just by the Edgar County Watchdogs, but also by other local news outlets. *See, e.g.*, Patch, "Naperville Liquor Commissioner Davenport Resigns After Request" Feb. 15, 2022 at <https://patch.com/illinois/naperville/naperville-liquor-commissioner-resigns-after-dui-arrest-reports>; Daily Herald, "Naperville liquor commission member resigns after arrest" Feb. 14, 2022 at <https://www.dailyherald.com/news/20220214/naperville-liquor-commission-member-resigns-after-dui-arrest>; Naperville Sun, "Naperville liquor commissioner resigns after being charged with DUI" Feb. 14, 2022 at <https://www.chicagotribune.com/suburbs/naperville-sun/ct-nvs-naperville-liquor-commissioner-dui-resigns-st-0213-20220214-nshv6wta4vckli364vbjbzgdwi->

story.html. On September 9, 2022, John Kraft from the Edgar County Watchdogs sent FOIA requests to the DuPage County State's Attorney's Office, the Naperville Police Department, and the DuPage County Sheriff's Office requesting the following:

Copy of all February 2022 arrest records, incident reports, court orders for blood draws and body camera footage of the arrest of Dana Davenport, a former Naperville Liquor Commissioner. This is currently listed as DuPage County Case Number 2022-CF-000259.

The FOIA Order, however, provides as follows: "that the Naperville Police Department and the DuPage County State's Attorney's Office not disseminate any public records, including reports under the Freedom of Information Act, regarding [*People v. Davenport*] after the entry of this order and until further order of Court." The Sheriff's Office stated that it did not have responsive records, and the other two public bodies cited the FOIA Order in denying Intervenor's requests.

On October 24, 2022, the Court accepted Ms. Davenport's guilty plea. Ms. Davenport pled guilty to DUI – Alcohol, and Counts 1 (obstruction of justice), 3 (failure to signal), 4 (disobeying traffic signal), and 5 (improper lane usage) were nolle prossed. The Court's Criminal Sentence Order (the "Sentencing Order") also states that "[e]vidence shall be disposed after 45 days unless there are more court filings."

II. Argument

A. The FOIA Order Contravenes the Illinois FOIA's Provision of a Broad Public Right of Access.

The Illinois FOIA is, fundamentally, a disclosure statute. The purpose of FOIA "is to open governmental records to the light of public scrutiny." *Bowie v. Evanston Cmty. Consolidated Sch. Dist. No. 65*, 128 Ill. 2d 373, 378 (1989). Accordingly, under FOIA, "public records are presumed to be open and accessible." *Lieber v. Bd. of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 407 (1997). As the General Assembly states in section 1 of FOIA: "it is the public policy

of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.” 5 ILCS 140/1. In order to further these goals, exemptions from disclosure are to be construed narrowly. *See Ill. Educ. Ass’n v. Ill. State Bd. of Educ.*, 204 Ill. 2d 456, 463 (2003) (stating that “this court has repeatedly held that the exceptions to disclosure set forth in the Act are to be read narrowly”). In erecting a roadblock to the full disclosure of public records (indeed any public records whatsoever) and bypassing the process for determining whether public records are subject to disclosure, the FOIA Order is obstructing the stated intent of the law.

B. There is no Need or Basis to Deny Access, Particularly Now that Ms. Davenport has Pled Guilty.

When it was entered, the ban on the disclosure of records was based on speculation about the effect of disclosure of the requested records on fair trial rights. Intervenor believes the FOIA Order was flawed from the inception. Regardless, now that defendant has pled guilty there is no reason whatsoever to prohibit public bodies from following their legal obligations under FOIA.¹ Cutting off disclosure of public records by other public bodies is an unnecessary means of addressing what was, at best, a purely hypothetical concern and is now completely moot.

C. The Sentencing Order Puts Public Access to Important Records at Risk.

In ordering that evidence be disposed, the Court appears to be directing the

¹ The foreclosure of access to all public records in the Naperville Police Department’s possession about the Davenport case is particularly problematic with regard to the arrest report. The Illinois FOIA specifically provides for the prompt release of arrest reports: “The following chronologically maintained arrest and criminal history information maintained by State or local criminal justice agencies shall be furnished as soon as practical, but in no event later than 72 hours after the arrest.” 5 ILCS 140/2.15. The Court has directed the Naperville Police Department not to produce a public record the Illinois legislature has emphasized must promptly be made available to the public.

destruction of public records. The ambit of the Court's order is not clear, but it appears to put the existence of public records (and therefore access to those records) in jeopardy. This would be concerning under any circumstances, but it is particularly concerning when the public has been prevented from gaining access to public records about the case. Intervenor therefore requests that the Court revise the Sentencing Order to remove the reference to disposal of evidence.

III. Conclusion

For the reasons set forth herein, Intervenor respectfully requests that this Court lift the FOIA Order, which will ensure that the media and public can continue to avail themselves of the process established by Illinois law for requesting and receiving public records and that the Court revise the Sentencing Order by deleting the directive to dispose of evidence.

Dated: November 17, 2022

Respectfully submitted,

EDGAR COUNTY WATCHDOGS, INC.

By: /s/ Brendan J. Healey

One of its attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing document has been served on November 17, 2022 via email to:

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