

**IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
COLES COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Plaintiff,)	
)	No. 2023-CF-44
v.)	
)	Hon. Mitchell K. Shick
BRADY L. ALLEN,)	
)	
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 a public record held by a government agency. In support of this Petition, Intervenor states as follows:

1. This case involves a former Coles County Assistant States Attorney Brady Allen who has been indicted and charged with 32 felony counts relating to his actions as a public official.
2. Intervenor is a news organization that publishes “Illinois Leaks” and has provided the public with news coverage of this important judicial matter. *See, e.g.*, Illinois Leaks, “Indictments: Former Coles Co. Asst State’s Attorney Charged With 32 Felony Counts”, Jan. 27, 2023 at <https://edgarcountywatchdogs.com/2023/01/indictments-former-coles-co-asst-states-attorney-charged-with-32-felony-counts/?highlight=brady>; Illinois Leaks, “Defendant Brady Allen Appears in Coles County Court Hearing”, Feb. 16, 2023 at

<https://edgarcountywatchdogs.com/2023/02/defendant-brady-allen-appears-in-coles-county-court-hearing/?highlight=%22Brady%20Allen%22>.

3. On February 16, 2023, the Court entered an order, which appears to have been requested by the defense, impounding Defendant's booking photo. Intervenor then sought access to Defendant's booking photo through the Illinois Freedom of Information Act, 5 ILCS 140/1 to 5 ILCS 140/11.6, and Intervenor's request for access to the booking photo was 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 booking photos are presumptively available to requesters under FOIA and the Illinois State Records Act. 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 the case of the booking photo, the defendant’s booking photo is presumptively public and must be made available within 72 hours after arrest. *See* 5 ILCS 140/2.15(a)(1). The State Records Act provides that booking photos “must be made available to the news media.” 5 ILCS 160/4a.

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 a vital public record.

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 to Booking Photo (attached hereto as Ex. A), grant Intervenor’s Motion and lift the order impounding the booking photo, and grant such further relief as is just.

Dated: October 27, 2023

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 TO BOOKING PHOTO**

In this high-profile case in which a former assistant state’s attorney was arrested for, among other things, more than 20 counts of official misconduct, the Court has entered an order impounding the Defendant’s booking photo (the “Order”). The publicly available docket sheet provides no justification for the impoundment of the booking photo. Indeed, booking photos are presumptively public in Illinois, and the public has a right to such public records. That right is particularly compelling when the Defendant is being accused of crimes that were allegedly committed in the course of his official duties. The decision to impound the booking photo conflicts with the clear mandate not only of the Illinois Freedom of Information Act but also of the State Records Act. In enacting FOIA, the Illinois legislature clearly laid out the State of Illinois’ strong interest in making public records available to the public, and it specifically stated that booking photos should be available almost immediately after arrest. The State Records Act does the same. The Order subverts the will of the legislature and deprives the public of a critical public record. Intervenor respectfully requests that this Court re-visit its prior ruling and lift the

Order, which will provide the public with the opportunity to seek records that the legislature has definitively stated should be made available.

I. Facts

Defendant Brady Allen is a prominent former public official. He served as an Assistant State's Attorney in Coles County. In January of 2023, he was arrested and charged with one count of witness harassment, nine counts of bribery, 21 counts of official misconduct, and one count of witness intimidation. All of the charges are felonies. The charges relate to Defendant's conduct as an assistant Coles County State's Attorney, and Defendant is alleged to have promised women preferential treatment in cases in exchange for sexual contact, photos, and videos.

Mr. Allen's case has garnered a great deal of public attention, and it has been covered not just by the Edgar County Watchdogs but also by other local news outlets. *See, e.g.*, WAND-TV, "Former Coles Co. Assistant State's Attorney appears in court" Feb. 16, 2023 at https://www.wandtv.com/news/former-coles-co-assistant-states-attorney-appears-in-court/article_6f394bce-ae45-11ed-b73a-7bad698b8a03.html; Jacksonville Journal Courier, "Former Coles County assistant state's attorney arrested on 32 bribery, misconduct charges," Jan. 27, 2023 at <https://www.myjournalcourier.com/news/article/assistant-sa-charged-17746470.php>; WCIA-TV, "Former Coles County prosecutor charged with bribery" Jan. 27, 2023 at <https://www.wcia.com/news/former-coles-county-prosecutor-charged-with-bribery/>. On February 18, 2023, John Kraft from the Edgar County Watchdogs sent a FOIA request to the Coles County Sheriff's Office requesting a "copy of mugshot or booking photo for Brady Allen."

On February 16, 2023, however, the Court had entered the Order, which appears to have been requested by the defense, impounding Defendant’s booking photo. The Sheriff’s Office cited the Order in denying Mr. Kraft’s request for the booking photo.

II. Argument

A. The Order Contradicts the Illinois Law’s Specific Mandate to Disclose Booking Photos.

Booking photos are presumptively open to the public under the Illinois FOIA and the State Records Act. Indeed, the FOIA provides not only that booking photos must be disclosed, but also that they must be disclosed almost immediately after arrest. Section 2.15 of the FOIA (“Arrest reports”) requires that “[t]he 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 . . . : (i) information that identifies the individual, including the name, age, address, and photograph, when and if available” 5 ILCS 140/2.15(a)(1). The State Records Act does the same and provides that a booking photo “must be made available to the news media . . . as soon as practicable but in no event shall the time period exceed 72 hours from the arrest.” 5 ILCS 160/4a(a) & 160/4a(b). The Order is therefore preventing the Coles County Sheriff’s Office from disclosing a public record the Illinois legislature has emphasized must promptly be made available to the public.

B. The 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 a public record, the Order obstructs the stated intent of the law.

III. Conclusion

For the reasons set forth herein, Intervenor respectfully requests that this Court lift the Order, which will ensure that the media and public can have access to an important public record.

Dated: October 27, 2023

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 October 27, 2023 via email to:

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