

SORLING NORTHRUP

ATTORNEYS

October 10, 2023

VIA EMAIL matthew.goodman@ilag.gov AND U.S. MAIL

Matt Goodman, Assistant Attorney General
Illinois Attorney General's Office,
Public Access Bureau
500 South Second Street,
Springfield, Illinois 62701

Re: FOIA Request Review – 2023 PAC 78223
Requester: Brian K. Anderson
Date of FOIA Request: September 14, 2023

Dear Attorney Goodman (Matt):

On Monday, October 3, 2023, we received correspondence from your office demanding that we respond within seven (7) business days to **explain the legal and factual basis for the Mahomet Township Road District's finding that Brian Anderson is still properly classified as a recurrent requester pursuant to §2(g) (5 ILCS 140/2(g)) of the Freedom of Information Act ("FOIA"). (Exhibit 1).** The Road District first declared Anderson as an individual acting as a group under §2(b) of FOIA. **(Exhibit 2).** On October 19, 2022, the Illinois Attorney General's Public Access Bureau ("PAB") concurred and also found that Anderson, Chad Coit and Lisa Slade had acted in concert to request information and, therefore, were properly characterized as a single person for purposes of determining whether Anderson's requests were "unduly burdensome repeated requests." **(Exhibit 3).**

On November 8, 2022, the Road District additionally concluded and determined for the first time that Anderson qualified as a "recurrent requester" under §2(g) and §3.2 of FOIA. **(Exhibit 4).** Anderson immediately appealed that determination to the PAB.

On November 16, 2022, the PAB sent a demand letter seeking the factual and legal basis for the Road District's finding. **(Exhibit 5).** Two days later the PAB sent a second letter from a different Assistant Attorney General making yet another demand that the Road District defend its classification and provide a detailed legal and factual basis for finding Anderson a recurrent requester. **(Exhibit 6).**

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On November 28, 2022, our office responded to the PAB’s demands by providing evidence of eighty-three (83) different FOIA requests served on the Road District by Anderson since March 1, 2022. (**Exhibit 7**). On November 9, 2022, we sent a second response to the PAB reiterating our position and documenting the full-scale harassment campaign promulgated by Anderson against the Road District and its individual personnel.¹ (**Exhibit 8**). Both letters noted that “[a]lthough 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 . . . This Act is not intended to cause an unwarranted invasion of personal privacy, nor to allow the requests of a commercial enterprise to unduly burden public resources, or to *disrupt the duly-undertaken work of any public body* independent of the fulfillment of any of the fore-mentioned rights of the people to access to information.” (Emphasis added). *City of Champaign v. Madigan*, 2013 IL App (4th) 120662, ¶ 29, 992 N.E.2d 629, 635. Both letters further noted that instead of Anderson using FOIA as a shield to protect his right as a citizen to be informed, he was using the Act and the PAB as a sword to attack the government for personal bias or agenda.

This brings us to the PAB’s most recent demand (October 3, 2023) that the Mahomet Township Road District yet again provide a detailed legal and factual basis for maintaining its finding that Anderson is a recurrent requester. To be characterized as a recurrent requester under §3.2 of FOIA, a person must submit (i) a minimum of 50 requests for records in the 12 months immediately preceding the request, or (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period. A review of the records since September 14, 2023, demonstrates Anderson no longer qualifies as recurrent requester under the Act. Our records show as follows:

01	10/16/22	Coit	Township	RD information
02	10/17/22	Slade	Township	RD information
03	10/17/22	Hall ²	RD	RD information
03	10/20/22	Anderson	Township	RD information
04	10/26/22	Anderson	RD	RD information
05	11/08/22	Anderson	RD	RD information

¹ The harassment campaign included: (i) the creation of a fake Mahomet Road District Facebook page and a Temporary Restraining Order issued against Chad Coit for refusing to take down the fake website; (ii) the issuance of a “No Stalking No Contact Order” against Anderson in Champaign County (Case No. 22-OP-525) in favor of Chris Doenitz wife, Shereth Doenitz, a Road District employee; (iii) the filing of a frivolous Motion to Disqualify Sorling Northrup from representing Chris Doenitz’s wife filed by Anderson seeking to prevent Sorling Northrup from seeking a protective order, and (iv) the filing of a pending motion for sanctions against Anderson, pursuant to Illinois Supreme Court Rule 137, in response to Anderson filing frivolous pleadings involving (a) a Citizen’s Participation Act suit, (b) a baseless Motion to Disqualify, and (c) filing and then withdrawing a meritless Appeal of the no contact/no stalking order. **Oral argument for sanctions in that Champaign County Stalking No Contact Order (Case # 22-OP-525) is scheduled for October 30, 2023.**

² An attached social media chain evidencing Marcy Hall, Brian Anderson and John Bambenik were part of a private group combating perceived injustice by Mahomet, et al. (**Exhibit 9**). In addition, a civil suit had been filed against each party in Champaign County alleging each party engaged in conduct together against certain defendants. (**Exhibit 10**).

06	01/27/23	Bambenek	RD	RD information
07	03/03/23	Bambenek	RD	RD information
08	04/05/23	Anderson	Township	RD information
09	04/15/23	Coit	RD	RD information
10	07/13/23	Anderson	RD	RD information
11	08/10/23	Anderson	RD	RD information
12	09/14/23	Anderson	RD	RD information

Consequently, although the Mahomet Township Road District necessarily concedes that Anderson no longer qualifies as a recurrent requester, the Road District maintains its position that Anderson's conduct constitutes an actionable abuse of process. To be more specific, Anderson's prior FOIA efforts and prior frivolous appeals to the Public Access Bureau, when coupled with the extent of his uniquely abhorrent behavior listed in FN #1, evidences an abuse of process.

The only elements necessary to plead a cause of action for abuse of process are: (1) the existence of an ulterior purpose or motive and (2) some act in the use of legal process not proper in the regular prosecution of the proceedings. *Kumar v. Bornstein*, 354 Ill.App. 3d 159, 165 (2nd Dist. 2004). To satisfy the first element, a plaintiff must plead facts that show the defendant instituted proceedings for an improper purpose, "such as extortion, intimidation, or embarrassment." Anderson's prior 83 FOIA requests and numerous appeals to the Public Access Bureau, when he already knew of the Bureau's "recurrent requester" determination and the multitude of requests already submitted to Mahomet Township for Road District information, unequivocally demonstrated Anderson's prior appeals, some of which were later withdrawn, were little more than a continued effort to intimidate, harass or otherwise embarrass the Road District, particularly considering other pending litigation. The first element, therefore, would be easily met, notwithstanding Anderson's efforts to finally moderate his FOIA requests to avoid his recurrent requester status.

To satisfy the second element, a plaintiff must show that the process was used to accomplish some result that is beyond the purview of the process. Anderson's prior complaint to the PAB that Sorling Northrup should be sanctioned or removed from representing the Road District and/or his prior baseless appeals pertaining to either the Township's or the Road District's responses to his FOIA requests demonstrates that Anderson is more interested in using the FOIA process to impose a financial and a time burden on the Road District to impair or hinder its day-to-day operations. The second element, therefore, would be established as well, particularly in light of the collateral litigation still taking place concurrently with Anderson's continued FOIA campaign.

Succinctly stated, the Road District concedes Anderson no longer qualifies as a recurrent requester. Notwithstanding that concession, the Road District encourages the Illinois Attorney General's Office to exercise its discretion and take whatever steps are within its power to curtail Anderson's conduct under the "unduly burdensome repeated requests" standard or "abuse of process" standard. Otherwise, the PAB will undoubtedly be repeatedly stuck in the role of being a compelled agent in Anderson's ongoing harassment campaign against Mahomet Township.

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Should your office require anything else the Road District shall timely respond to the PAB's request.

Respectfully,



James G. Fahey

JGF/ckr

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